

DR. AMBEDKAR: THE PRINCIPAL ARCHITECT OF THE CONSTITUTION OF INDIA

PART I

From Dr. Ambedkar's entry into the Constituent Assembly to the presentation of the Draft of the Indian Constitution to the Constituent Assembly

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SECTION ONE

December 9, 1946 to July 31, 1947

Resolution Regarding Aims and Objects

{After the end of the Second World War in 1945, the question of India's freedom assumed priority. The British Government sent three-men delegation to India to suggest the ways and means for the smooth transfer of power. This delegation, called Cabinet Mission, announced on 16 March 1946 its proposals in which, it was suggested that a Constituent Assembly be set up to frame a Constitution for the future governance of India.

Accordingly elections to the Constituent Assembly were held in which members were elected by the Provincial Legislative Assemblies. Dr. Ambedkar, having failed to get elected from Bombay due to Congress opposition, managed to enter the Constituent Assembly through the Bengal Assembly with the support of Jogendranath Mandal and other Scheduled Caste members.

The Constituent Assembly started its work of framing free India's Constitution on 9th December 1946. In all 296 members were entitled to take part in the inaugural session. But only 207 attended, the absentees were mainly the Muslim League members who had boycotted the Constituent Assembly.]

The first meeting of the Constituent Assembly of India commenced in the Constitution Hall, New Delhi on Monday, the 9th December 1946, at Eleven of the Clock.

Acharya J. B. Kripalani requested Dr. Sachchidanand Sinha to take the chair as temporary Chairman. The Chairman gave an inaugural address to the House. This was followed by nomination of Shri Frank Anthony as the Deputy Chairman.

The members then presented the credentials and signed their names in the register. Dr. B. R. Ambedkar signed as a member from Bengal. The Assembly passed the rules for the election of the Chairman of the Constituent Assembly on 10th December 1946. The Assembly thereafter elected Dr. Rajendra Prasad as permanent Chairman of the Assembly on 11th December 1946.

On 13th December 1946, the Hon'ble Pandit Jawaharlal Nehru moved the resolution regarding Aims and Objects as under:—

(1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution :

(2) WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all ; and

(3) WHEREIN The said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom : and

(4) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people : and

(5) WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the

law ; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

(6) WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes: and

(7) WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilised nations, and

(8) This ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind. "

{This was followed by speeches by Pandit Nehru, Purushottam Das Tandon and the Chairman, Dr. Rajendra Prasad. The Assembly then adjourned till 16th December 1946.—Ed.]

[Dr. M. R. Jayakar, moved his amendment to the above resolution on 16th December 1946.—Ed.]

The Right Hon'ble Dr. M. R. Jayakar (Bombay General) : Well, I will read the amendment. I wanted to save your time by a few minutes. This is the amendment:

" This Assembly declares its Firm and solemn resolve that the Constitution to be prepared by this Assembly for the future governance of India shall be for a free and democratic Sovereign State ; but with a view to securing, in the shaping of such a constitution, the co-operation of the Muslim League and the Indian States, and thereby intensifying the firmness of this resolve, this Assembly postpones the further consideration of this question to a later date, to enable the representatives of these two bodies to participate, if they so choose, in the deliberations of this Assembly."

In substance, my amendment means that the further consideration of this Resolution should be postponed to a later stage,—the stage of Union constitution-making at which, I take it, the Indian States and the Muslim League are expected to be present.....

{Dr. M. R. Jayakar objected to the timing of the resolution. He moved an amendment, seeking postponement of the passing of the resolution, as he wanted the Muslim League to join the task of laying down the fundamentals of the Constitution. This resolution created a tense atmosphere in the House. Amidst this tense situation Dr. Ambedkar was invited by the President Dr. Rajendra Prasad unexpectedly to have his say on 17th December 1946. When Dr. Ambedkar started, the House was all attention.

Dr. Dhananjay Keer writes, " Everybody thought that Dr. Ambedkar by playing such dangerous role would go under with the mover of the amendment to rise against the will and the objections of the Congress bosses, who were the nation's most powerful leaders, was to meet one's Waterloo. The Congress members were ready with their hands raised to cripple their avowed enemy and throw him down ". This historic speech changed the course of Dr. Ambedkar's political career. The speech drew the longest and the most vociferous applause. As Mr. N. V. Gadgil, an eye-witness to this event observed " His speech was so statesmanlike, so devoid of bitterness and so earnestly challenging that the whole of Assembly listened to it in rapt silence. The speech was greeted with tremendous ovation and he was smothered with congratulations in the lobby ". The speech had its ultimate effect and the Constituent Assembly postponed the consideration of the objective resolution till the next session. The said speech of Dr. Ambedkar is as under.—Ed.]

Mr. Chairman : Dr. Ambedkar.

Dr. B. R. Ambedkar : (Bengal : General) : Mr. Chairman, I am indeed very grateful to you for having called me to speak on the Resolution. I must however confess that your invitation has come to me as a surprise. I thought that as there were some 20 or 22 people ' head of me, my turn, if it did come at all, would come tomorrow.

I would have preferred that as today I have come without any preparation whatsoever. I would have like to prepare myself as I had intended to make a full statement on an occasion of this sort. Besides you have fixed a time limit of 10 minutes. Placed under these limitations, I don't know how I could do justice to the Resolution before us. I shall however do my best to condense in as few word's as possible what I think about the matter.

Mr. Chairman, the Resolution in the light of the discussion that has gone on since yesterday, obviously divides itself into two parts, one part which is controversial and another part which is no controversial. The part which is non-controversial is the part which comprises paragraphs (5) to (7) of this Resolution. These paragraphs set out the objectives of the future constitution of this country. I must confess that, coming as the Resolution does from Pandit Jawaharlal Nehru who is reputed to be a Socialist, this Resolution, although no controversial, is to my mind very disappointing. I should have expected him to go much further than he has done in that part of the Resolution. As a student of history, I should have preferred this part of the Resolution not being embodied in it at all. When one reads that part of the Resolution, it reminds one of the Declarations of the Rights of Man which was pronounced by the French Constituent Assembly. I think I am right in suggesting that, after the lapse of practically 450 years, the Declaration of the Rights of Man and the principles

which are embodied in it has become part and parcel of our mental makeup. I say they have become not only the part and parcel of the mental make-up of modern man in every civilised part of the world, but also in our own country which is so orthodox, so archaic in its thought and its social structure, hardly anyone can be found to deny its validity. To repeat it now as the Resolution does is, to say the least, pure pedantry. These principles have become the silent immaculate premise of our outlook. It is therefore unnecessary to proclaim as forming a part of our creed. The Resolution suffers from certain other lacuna. I find that this part of the Resolution, although it enunciates certain rights, does not speak of remedies. All of us are aware of the fact that rights are nothing unless remedies are provided whereby people can seek to obtain redress when rights are invaded. I find a complete absence of remedies. Even the usual formula that no man's life, liberty and property shall be taken without the due process of law, finds no place in the Resolution. These fundamental rights set out are made subject to law and morality. Obviously what is law, what is morality will be determined by the Executive of the day and when the Executive may take one view another Executive may take another view and we do not know what exactly would be the position with regard to fundamental rights, if this matter is left to the Executive of the day. Sir, there are here certain provisions which speak of justice, economical, social and political. If this Resolution has a reality behind it and a sincerity, of which I have not the least doubt, coming as it does from the Mover of the Resolution, I should have expected some provision whereby it would have been possible for the State to make economic, social and political justice a reality and I should have from that point of view expected the Resolution to state in most explicit terms that in order that there may be social and economic justice in the country, that there would be nationalisation of industry and nationalisation of land, I do not understand how it could be possible for any future Government which believes in doing justice socially, economically and politically, unless its economy is a socialistic economy. Therefore, personally, although I have no objection to the enunciation of these propositions, the Resolution is, to my mind, somewhat disappointing. I am however prepared to leave this subject where it is with the observations I have made.

Now I come to the first part of the Resolution, which includes the first four paragraphs. As I said from the debate that has gone on in the House, this has become a matter of controversy. The controversy seems to be centered on the use of that word ' Republic '. It is centered on the sentence occurring in paragraph 4 " the sovereignty is derived from the people ". Thereby it arises from the point made by my friend Dr. Jayakar yesterday that in the absence of the Muslim League it would not be proper for this Assembly to proceed to deal

with this Resolution. Now, Sir, I have got not the slightest doubt in my mind as to the future evolution and the ultimate shape of the social, political and economic structure of this great country. I know to day we are divided politically, socially and economically. We are a group of warring camps and I may go even to the extent of confessing that I am probably one of the leaders of such a camp. But, Sir, with all this, I am quite convinced that given time and circumstances nothing in the world will prevent this country from becoming one. (*Applause*): With all our castes and creeds, I have not the slightest hesitation that we shall in some form be a united people (*Cheers*). I have no hesitation in saying that notwithstanding the agitation of the Muslim League for the partition of India some day enough light would dawn upon the Muslims themselves and they too will begin to think that a United India is better even for them. (*Loud cheers and applause*).

So far as the ultimate goal is concerned, I think none of us need have any apprehensions. None of us need have any doubt. Our difficulty is not about the ultimate future. Our difficulty is how to make the heterogeneous mass that we have to day take a decision in common and march on the way which leads us to unity. Our difficulty is not with regard to the ultimate, our difficulty is with regard to the beginning. Mr. Chairman, therefore, I should have thought that in order to make us willing friends, in order to induce every party, every section in this country to take on to road it would be an act of greatest statesmanship for the majority party even to make a concession to the prejudices of people who are not prepared to march together and it is for that, that I propose to make this appeal. Let us leave aside slogans, let us leave aside words which frighten people. Let us even make a concession to the prejudices of our opponents, bring them in, so that they may willingly join with us on marching upon that road, which as I said, if we walk long enough, must necessarily lead us to unity, If I, therefore, from this place support Dr. Jayakar's amendment, it is because I want all of us to realise that whether we are right or wrong, whether the position that we take is in consonance with our legal rights, whether that agrees with the Statement of May the 16th or December 6th, leave all that aside. This is too big a question to be treated as a matter of legal rights. It is not a legal question at all. We should leave aside all legal considerations and make some attempt, whereby those who are not prepared to come, will come. Let us make it possible for them to come, that is my appeal.

In the course of the debate that took place, there were two questions which were raised, which struck me so well that I took the trouble of taking them down on a piece of paper. The one question was, I think, by my friend, the Prime Minister of Bihar who spoke yesterday in this Assembly. He said, how can this Resolution prevent the League from coming into the Constituent Assembly ?

Today my friend, Dr. Syama Prasad Mookherjee, asked another question. Is this Resolution inconsistent with the Cabinet Mission's Proposal? Sir, I think they are very important questions and they ought to be answered and answered categorically. I do maintain that this Resolution whether it is intended to bring about the result or not, whether it is a result of cold calculation or whether it is a mere matter of accident is bound to have the result of keeping the Muslim League out. In this connection I should like to invite your attention to Paragraph 3 of the Resolution, which I think is very significant and very important. Paragraph 3 envisages the future constitution of India. I do not know what is the intention of the mover of the Resolution. But I take it that after this Resolution is passed, it will act as a sort of a directive to the Constituent Assembly to frame a constitution in terms of para. 3 of the Resolution. What does paragraph 3 say? Paragraph 3 says that in this country there shall be two different sets of polity, one at the bottom, autonomous Provinces or the States or such other areas as care to join a United India. These autonomous units will have full power. They will have also residuary powers. At the top, over the Provincial units, there will be a Union Government, having certain subjects for legislation, for execution and for administration. As I read this part of the Resolution, I do not find any reference to the idea of grouping, an intermediate structure between the Union on the one hand and the provinces on the other. Reading this para, in the light of the Cabinet Mission's Statement or reading it even in the light of the Resolution passed by the Congress at its Wardha session, I must confess that I am a great deal surprised at the absence of any reference to the idea of grouping of the provinces. So far as I am personally concerned, I do not like the idea of grouping (*hear, hear*) I like a strong united Centre, (*hear, hear*) much stronger than the Centre we had created under the Government of India Act of 1935. But, Sir, these opinions, these wishes have no bearing on the situation at all. We have travelled a long road. The Congress Party, for reasons best known to itself consented, if I may use that expression, to the dismantling of a strong Centre which had been created in this country as a result of 15U years of administration and which I must say, was to me a matter of great admiration and respect and refuge. But having given up that position, having said that we do not want a strong centre, and having accepted that there must be or should be an intermediate polity, a sub-federation between the Union Government and the Provinces I would like to know why there is no reference in para. 3 to the idea of grouping. I quite understand that the Congress Party, the Muslim League and His Majesty's Government are not *ad idem* on the interpretation of the clause relating to grouping. But I always thought that, —I am prepared to stand corrected if it is shown that I am wrong,—at least it was agreed by the Congress Party that if the Provinces

which are placed within different groups consent to form a Union or Sub-federation, the Congress would have no objection to that proposal. I believe I am correct in interpreting the mind of the Congress Party. The question I ask is this. Why did not the Mover of this Resolution make reference to the idea of a Union of Province's or grouping of Provinces on the terms on which he and his party was prepared to accept it ? Why is the idea of Union completely effaced from this Resolution ? I find no answer. None whatever. I therefore say in answer to the two questions which have been posed here in this Assembly by the Prime Minister of Bihar and Dr. Syama Prasad Mookherjee as to how this Resolution is inconsistent with the Statement of May 16th or how this Resolution is going to prevent the Muslim League from entering this Constituent Assembly, that here is para. 3 which the Muslim League is bound to take advantage of and justify its continued absentation. Sir, my friend Dr. Jayakar, yesterday, in arguing his case for postponing a decision on this issue put his case, if I may say so, without offence to him, somewhat in a legalistic manner. The basis of his argument was, have you the right to do so ? He read out certain portions from the Statement of the Cabinet Mission which related to the procedural part of the Constituent Assembly and his contention was that the procedure that this Constituent Assembly was adopting in deciding upon this Resolution straightaway was inconsistent with the procedure that was laid down in that Paper. Sir, I like to put the matter in a somewhat different way. The way I like to put it is this, I am not asking you to consider whether you have the right to pass this Resolution straightaway or not. It may be that you have the right to do so. The question I am asking is this. Is it prudent for you to do so ? Is it wise for you to do so ? Power is one thing ; wisdom is quite a different thing and I want this House to consider this matter from the point of view, namely, whether it would be wise, whether it would be statesmanlike, whether it would be prudent to do so at this stage. The answer that I give is that it would not be prudent, it would not be wise. I suggest that another attempt may be made to bring about a solution of the dispute between the Congress and the Muslim League. This subject is so vital, so important that I am sure it could never be decided on the mere basis of dignity of one party or the dignity of another party. When deciding the destinies of nations, dignities of people, dignities of leaders and dignities of parties ought to count for nothing. The destiny of the country ought to count for everything. It is because I feel that it would in the interest not only of this Constituent Assembly so that it may function as one whole, so that it may have the reaction of the Muslim League before it proceeds to decision that I support Dr. Jayakar's amendment—we must also consider what is going to happen with regard to the future, if we act precipitately. I do not know what plans the Congress Party, which holds this House in its possession, has in its

mind ? I have no power of divination to know what they are thinking about. What are their tactics, what is their strategy, I do not know. But applying my mind as an outsider to the issue that has arisen, it seems to me there are only three ways by which the future will be decided. Either there shall have to be surrender by the one party to the wishes of the other—that is one way. The other way would be what I call a negotiated peace and the third way would be open war. Sir, I have been hearing from certain members of the Constituent Assembly that they are prepared to go to war. I must confess that I am appalled at the idea that anybody in this country should think of solving the political problems of this country by the method of war. I do not know how many people in this country support that idea. A good many perhaps do and the reason why I think they do, is because most of them, at any rate a great many of them, believe that the war that they are thinking of, would be a war on the British. Well, Sir, if the war that is contemplated, that is in the minds of people, can be localised, circumscribed, so that it will not be more than a war on the British, I probably may not have much objection to that sort of strategy. But will it be a war on the British only ? I have no hesitation and I do want to place before this House in the clearest terms possible that if war comes in this country and if that war has any relation to the issue with which we are confronted to-day, it will not be a war on the British. It will be a war on the Muslims. It will be a war on the Muslims or which is probably worse, it will be a war on a combination of the British and the Muslims. I cannot see how this contemplated war be of the sort different from what I fear it will be. Sir, I like to read to the House a passage from Burke's great speech on Conciliation with America. I believe this may have some effect upon the temper of this House. The British people as you know were trying to conquer the rebellious colonies of the United States, and bring them under their subjection contrary to their wishes. In repelling this idea of conquering the colonies this is what Burke said:—

" First, Sir permit *me* to observe, that the use of force alone is but temporary. It may subdue for a moment; but it does not remove the necessity of subduing again ; and a nation is not governed which *is* perpetually to be conquered.

" My next objection is its uncertainty. Terror is not always the effect of force and an armament is not a victory. If you do not succeed, you are without resource for, conciliation failing, force remains: but, force failing, no further hope of reconciliation is left. Power and authority are sometimes bought by kindness', but they can never be begged as alms by an impoverished and defeated violence.....

" A further objection to force is. that you impair the object by your very endeavours to preserve it. The thing you fought for is not the thing which you recover; but depreciated, sunk, wasted and consumed in the contest".

These are weighty words which it would be perilous to ignore. If there is anybody who has in his mind the project of solving the Hindu-Muslim problem by force, which is another name of solving it by war, in order that the Muslims may be subjugated and made to surrender to the Constitution that might be prepared without their consent, this country would be involved in perpetually conquering them. The conquest would not be once and for ever. I do not wish to take more time than I have taken and I will conclude by again referring to Burke. Burke has said somewhere that it is easy to give power, it is difficult to give wisdom. Let us prove by our conduct that if this Assembly has arrogated to itself sovereign powers it is prepared to exercise them with wisdom. That is the only way by which we can carry with us all sections of the country. There is no other way that can lead us to unity. Let us have no doubt on that point.

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Interim Report on Fundamental Rights

The Hon'ble Pandit Hirday Nath Kunzru :... That Government is faced with an extraordinary difficult problem and clause 8(e) shows a strange disregard of the existing state of things there. I think, Sir, that this right can be conferred only under certain conditions which have to be clearly defined.

Dr. B. R. Ambedkar (Bengal : General) : I do not wish to interrupt the speaker; but in dealing with clause 8(e) , he is rather giving a wrong impression of the whole clause.

Dr. B. Pattabhi Sitaramayya (Madras : General) : Instead of giving illustrations to make his points clear, he is going into a discussion of the merits.

The Hon'ble Pandit Hirday Nath Kunzru : As a parliamentarian, Sir, you understand what I am doing. As regards Dr. Ambedkar's objection, I may say—and I am sure you will bear me out,—1 read out the entire clause including the proviso.

Mr. President : I would request the Member to confine himself to the point which he wants to illustrate and not go into the merits of the proposal.

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CLAUSE 11. —RIGHTS OF FREEDOM

The Hon'ble Sardar Vallabhbhai Patel : Clause 11 is as regards forced labour and it reads :

" 11. (a) Traffic in human beings, and

(b) Forced labour in any form including begar *and* involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted, are hereby prohibited and any contravention of this prohibition shall be an offence."

Explanation—

" Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class.

Now we have to try to discuss this and abridge it and put it in a comprehensive form instead of separate clauses and put it in one clause" traffic in human beings

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Dr. B. R. Ambedkar (Bengal : General) : The point that I want to make is this, that, while I have no objection to the redrafting of sub-clause (a) and (b) in order that they may run in a compact manner, I have certain amount of doubt as to whether the dropping of the Explanation is in consonance with the desire of the majority of the members of the Advisory Committee that the State should not have power in any way for introducing compulsory service. Mr. Munshi suggests that, if the clause stands as redrafted and if the Explanation is omitted, none-the-less, the State will have the right to introduce compulsory military service, I have not had sufficient time to apply my mind to the consequences of the proposed change, *i.e.*, the dropping of the Explanation but I fear that the dropping of the Explanation and retaining the clause in the form in which it is stated may have opposite and serious consequences. Because ' *begar* ' is also something which is imposed by the State. So far as I know, in Bombay, ' *begar* ' is demanded by the State for certain public purpose, and if the State is prohibited from having ' *begar* ' it is perfectly possible for anybody to argue that even compulsory military service is *begar*. I am, therefore, not quite satisfied that the dropping of the Explanation is something which is advisable at this stage. I am not in a position to suggest any definite course of action in this matter, but I think I shall be sufficiently discharging my duties if I draw the attention of the House to the doubt which I have in mind about the effect which the dropping of the Explanation may have on the right of the State in regard to compulsory service either for military purposes or for social purposes for the State. My suggestion would be that at this stage we should not drop the Explanation, but leave it as it is and have the whole matter reconsidered when the Provincial Constitution and the Federal Constitution are drafted in their final form.

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Dr. B. R. Ambedkar : May I make a suggestion '? We have heard the arguments of Sir Alladi Krishnaswami Ayyar who has said that according to his reading of the rulings of the Supreme Court of the United States, even if the Explanation was not there, the State would be permitted to have compulsory military service. Fortunately, for me I also happened to look into the very same

cases which I am sure Sir Alladi has in mind. I think he will agree with me, if he looks at the reasoning of the judgement given by the Supreme Court, he will find that they proceeded on the hypothesis that in a political organisation the free citizen has a duty to support the Government and as every citizen has a duty to support the Government therefore compulsory military law was doing nothing more than calling upon the citizen to do the duty which he already owes to the State. I submit that is a very precarious foundation for so important a subject as the necessity of compulsory military service for the defence of the State.

I submit that we ought not to rest content with that kind of reasoning which the Supreme Court in India may adopt or may not adopt. Therefore, my suggestion is this, that just as in the case of the other clause dealing with citizenship you were good enough to remit the matter to a small Committee to have it further examined, it will be desirable that this question as to whether the Explanation should be retained or not may also be remitted to a small committee which should report to this House. It will then be possible for the House to take a correct decision in the matter.

Mr. President : I think it is not necessary to have any further discussion if the suggestion which has been made by Dr. Ambedkar is acceptable to the House.

Mr. R. K. Sidhwa (C.P. and Berar : General) : The question regarding compulsory military service may be discussed here.

Mr. President : We are not deciding here whether we ought to have conscription or not. The question is whether under fundamental rights conscription is prohibited. I think it is best to refer it to the same committee to which the other clause has been remitted.

An Hon'ble Member : The whole clause 11.

Mr. President : Yes, the whole clause 11.

The clause was remitted.

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CLAUSE 17

The Hon'ble Sardar Vallabhbhai Patel : Sir, I move Clause 17. " Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law."

Mr. K. M. Munshi : Sir, I beg to move the following amendment :

"That for clause 17 substitute the following clause:

' Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence or of a minor under the age of 18 shall not be recognised by law '

* * * * *

Dr. B. R. Ambedkar : Mr. President, Sir, I am sorry to say that I do not find myself in agreement with the amendment which had been moved by Mr. Munshi relating to the question of the conversion of minor children. The clause, as it stands, probably gives the impression to the House that this question relating to the conversion of minors was not considered by the Fundamental Rights Committee or by the Minorities Sub-Committee or by the Advisory Committee. I should like to assure the House that a good deal of consideration was bestowed on this question and every aspect was examined. It was, after examining the whole question in all its aspects, and seeing the difficulties, which came up, that the Advisory Committee came to the conclusion that they should adhere to the clause as it now stands.

Sir, the difficulty is so clear to my mind that I find no other course but to request Mr. Munshi to drop his amendment.

With regard to children, there are three possible cases, which can be visualised. First of all, there is the case of children with parents and guardians. There is the case of children who are orphans, who have no parents and no guardians in the legal sense of the word. Supposing you have this clause prohibiting the conversion of children below 18, what is going to be the position of children who are orphans ? Are they not going to have any kind of religion ? Are they not to have any religious instruction given to them by some one who happens to take a kindly interest in them ? It seems to me that, if the clause as worded by Mr. Munshi was adopted, *viz.*, that no child below the age of 18 shall be converted it would follow that children who are orphans, who have no legal guardians, cannot have any kind of religious instruction. I am sure that this is not the result, which this House would be happy to contemplate. Therefore, such a class of subjects shall have to be excepted from the operation of the amendment proposed by Mr. Munshi.

Then, I come to the other class, *viz.*, children with parents and guardians. They may fall into two categories. For the sake of clarity it might be desirable to consider their cases separately; the first is this : where children are converted with the knowledge and consent of their guardians and parents. The second case is that of children of parents who have become converts.

It does seem to me that there ought to be a prohibition upon the conversion of minor children with legal guardians, where the conversion takes place without the consent and knowledge of the legal guardians. That, I think, is a very legitimate proposition. No missionary who wants to convert a child which is under the lawful guardianship of some person, who according to the law of guardianship is entitled to regulate and control the religious faith of that particular child, ought to deprive that person or guardian of the right of having notice and having knowledge that the child is being converted to another faith.

That, I think, is a simple proposition to which there can be no objection.

But when we come to the other case, *viz.*, where parents are converted and we have to consider the case of their children, then I think we come across what I might say a very hard rock. If you are going to say that, although parents may be converted because they are majors and above the age of 18, minors below the age of 18, although they are their children, are not to be converted with the parent, the question that we have to consider is, what arrangement are we going to make with regard to the children? Suppose, a parent is converted to Christianity. Suppose a child of such a parent dies. The parent, having been brought up in the Christian faith, gives the Christian burial to the dead child. Is that act on the part of the parent in giving a Christian burial to the child, to be regarded as an offence in law? Take another case. Suppose a parent who has become converted has a daughter. He marries that daughter according to Christian rites. What is to be the consequence of that marriage? What is to be the effect of that marriage? Is that marriage legal or not legal?

If you do not want that the children should be converted, you have to make some other kind of law with regard to guardianship in order to prevent the parents from exercising their rights to influence and shape the religious life of their children. Sir. I would like to ask whether it would be possible for this House to accept that a child of five, for instance, ought to be separated from his parents merely because the parents have adopted Christianity, or some religion which was not originally theirs. I refer to these difficulties in order to show that it is those difficulties which faced the Fundamental Rights Committee, the Minorities Committee and the Advisory Committee and which led them to reject this proposition. It was, because we realised, that the acceptance of the proposition, namely, that a person shall not be converted below the age of 18, would lead to many disruptions, to so many evil consequences, that we thought it would be better to drop the whole thing altogether (*Hear, hear*). The mere fact that we have made no such reference in clause 17 of the Fundamental Rights does not in my judgment prevent the legislature when it becomes operative from making any law in order to regulate this matter. My submission, therefore, is that the reference back of this clause to a committee for further consideration is not going to produce any better result. I have no objection to the matter being further examined by persons who feel differently about it, but I do like to say that all the three Committees have given their best attention to the subject. I have therefore, come to the conclusion that having regard to all the circumstances of the case, the best way would be to drop the clause altogether. I have no objection to a provision being made that children who have legal and lawful guardians should not be converted without the knowledge and notice of the parents. That, I think, ought to suffice in the case.

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{The clause was referred back to the Advisory Committee.—Ed.]

CLAUSE 18—CULTURAL AND EDUCATIONAL RIGHTS

The Hon*ble Sardar Vallabhbhai Patel : I move clause 18 now.

" (1) Minorities in every Unit shall be protected in respect of their languages, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsory on them.

(3) (a) All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice.

(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language. "

I move this clause for the acceptance of the House.

Shri Mohanlal Saksena (United Provinces : General) : Sir, with your permission, I would like to move that this clause be referred back to the Advisory Committee for reconsideration. There are certain aspects which require reconsideration, and, on the whole, I think it would be much better that this whole clause be referred to the Advisory Committee for their reconsideration.

Mr. President : Mr. Mohanlal Saksena has moved that this clause also be referred back to the Advisory Committee for further consideration.

* * * * *

Mr. K. M. Munshi : I move that sub-clause (2) of clause 18 be referred back to the Advisory Committee. It was the general sense of many of the members that this clause should be reconsidered in the light of discussion that took place.

Dr. B. R. Ambedkar : Mr. President, Sir, I confess that I am considerably surprised at these amendments—both by Mr. Munshi as well as Mr. Tyagi. They have. I submit, given no reason why this clause 18 should be referred back to the Committee. The only reason in support of this proposal—one can sense—is that the rights of minorities should be relative, that is to say, we must wait and see what rights the minorities are given by the Pakistan Assembly before we determine the rights we want to give to the minorities in the Hindustan area. Now, Sir, with all deference, I must deprecate any such idea. Rights of minorities should be absolute rights. They should not be subject to

any consideration as to what another party may like to do to minorities within its jurisdiction. If we find that certain minorities in which we are interested and which are within the jurisdiction of another State have not got the same rights which we have given to minorities in our territory, it would be open for the State to take up the matter in a diplomatic manner and see that the wrongs are rectified. But no matter what others do, I think we ought to do what is right in our own judgement and personally I think that the rights which are indicated in clause 18 are rights which every minority, irrespective of any other consideration is entitled to claim. The first right that we have given is the right to use their language, their script and their culture. We have stated that " there shall be no discrimination on the ground of religion, language, etc." in the matter of admission into State educational institutions. We have said that " no minority shall be precluded from establishing any educational institution which such minority may wish to establish ". It is also stated there that whenever a State decides to provide aid to schools or other educational institutions maintained by the minority, they shall not discriminate in the matter of giving grant on the basis of religion, community or language. Sir, I cannot understand how there can be any objection to these rights which have been indicated in clause 18. At any rate, nobody who has supported the motion that this may be referred back to the Committee has advanced any argument that either these rights are in excess of what a minority ought to have or are such that a minority ought not to have them. Therefore, it seems to me a great pity that the labours of three Committees which have evolved these provisions should be so brusquely set aside simply because for some reasons people want that this matter should be referred back to the Committee. I do not know what objection my friend Mr. Munshi has to sub-clause (2) as it stands, but if it is necessary that this sub-clause may be referred back to the Committee, I certainly would raise no objection. That sub-clause may be referred back because I understand that we have limited this matter to State educational institutions and we have said nothing about those which are only State-aided. If that point needs to be further clarified the matter may be referred back, but, because there may be something to be said in favour of the reference back of sub-clause (2) I do not see that the same logic could be extended to the whole of the clause. I submit therefore that the clause as it stands, should be passed, barring sub-clause (2) which may, if necessary, be referred back to the Committee for consideration.

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Mr. President : Now, there are two clauses that had been referred to a committee of five. We may now take them up one by one. The new clause 3 may now be moved.

Report of the Union Constitution Committee

Clause 3

Mr. K. M. Munshi : I move that the following clause be substituted for the original clause :—

" Every person both in the Union and subject to its jurisdiction, every person either of whose parents was at the time of such person's birth, a citizen of the Union, and every person naturalised in the union shall be a citizen of the Union.

Further provision regarding the acquisition and termination of Union citizenship may be made by the law of the Union."

The reasons have already been given fully in the Report of the *Ad Hoc* Committee. I have nothing to add to it.

Sri K. Santhanam : Sir, I move that the following be added at the end of the first paragraph of this clause:

" Every person born or naturalised in India before the commencement of the Union and subject to its jurisdiction shall be a citizen of the Union."

* * * * *

Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir, I think there can be no doubt that the point raised by Mr. Santhanam is a point of great importance and we have to take this matter seriously. The difficulty that has arisen will be seen easily if one reads the very first sentence of the clause as drafted by the Committee. The draft says, " every person born in the Union ". Obviously that has reference to future, those who will be born in the Union after the Union is formed. The question is this. What is going to be the position of people who are born in India, hut who are born before the Union has come into being '? In my judgment, in order to cover that case, we shall have to introduce another clause. I am not suggesting an amendment, I am putting forth an idea. The new clause shall have to be something like this:

" All persons born in India, as defined in the General Clause's Act and who are residing in the Union and subject to the jurisdiction of the Union shall be citizens of the Union." I think that a clause somewhat on these lines is necessary and it will cover the case of people who are born in India, who will be the subjects of the Union, when the Union comes into being. Without this clause, large numbers of people will be denationalised. They will have no nationality at all. I, therefore, suggest that it may be as well to send the whole clause back for further consideration.

Mr. President : A suggestion has been made that the whole clause be held over for further consideration.

Mr. R. K. Sidhwa : This is not a matter for lawyers only. This question has a bearing on every ordinary person.

Mr. President : The Advisory Committee will be free to consider it, and if it so feels, it can put forward any suggestions at the next sitting. (Clause 3 was held over).

Clause 24

The Honourable Sir N. Gopaldaswami Ayyangar : Sir, I move Clause 24:

" 24. The superintendence, direction and control of all elections, whether Federal or Provincial, held under this constitution including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a commission to be appointed by the President. "

The object of this clause. Sir, is to ensure as far as possible that elections in the country. Federal or Provincial, are conducted in an impartial manner. The idea is to set up a Commission appointed by the President under whose auspices all these various aspects of election activities and post-election activities will be regulated and controlled.

* * * * *

Dr. B. R. Ambedkar (Bombay : General) : Mr. Vice-Chairman, I think it is desirable that I should state to the House the origin of this clause.

Although this clause appears in the Constitution which deals with the Union, as a matter of fact this matter was dealt with by the Fundamental Rights Committee. The Fundamental rights Committee came to the conclusion that no guarantee regarding minorities or regarding elections could be given if the elections were left in the hands of the Executive of the day. Many people felt that if the elections were conducted under the auspices of the Executive authority and if the Executive authority did have power, as it must have, of transferring officers from one area to another with the object of gaining support for a particular candidate who was a favourite with the party in office or with the Government of the day, that will certainly vitiate the free election which we all wanted. It was therefore unanimously resolved by the members of the Fundamental Rights Committee that the greatest safeguard for purity of election, for fairness in election, was to take away the matter from the hands of the Executive authority and to hand it over to some independent authority. Although Clause 23 does not specifically refer to the details of the scheme that was considered in the Fundamental Rights Committee, I should like to state to the House that the Scheme that was in the minds of the members of the Fundamental Rights Committee was that there would be a Central Commission appointed by the President in order to deal with the elections throughout India. Although that was the scheme contemplated that there should be a Central Commission appointed by the President to superintend, direct and control

elections, it was never contemplated that there would be only one Commission sitting in Delhi or at some centre where the Central Government was seated. The scheme was that there would be one Central Commission which probably would deal with the elections to the Federal Parliament but that the Commission would have also subordinate to it a Commission in each Province or, if a Province was too small to have a single commission, for two or three provinces combined together, so that their affairs so far as elections were concerned, may be carried on by a Local Commission. From the very beginning the idea was that this thing should be decentralised. There should be one Central Commission for Federal election and there should be several Commissions for the elections conducted in the various Provinces. My submission is this that if that scheme comes into operation, the point which my friend Mr. Pataskar has in mind in moving the amendment would be gained, because so far as I understood from him, what he wanted was that there should be a local authority or a Local Commission which would deal and be concerned with elections in That Province. I think that was our intention although that scheme has not been mentioned in Clause 24. That undoubtedly was the matter we had in mind. However, if my friend Mr. Pataskar still persists in putting his amendment through, I would like to ask him one question which remains a matter of doubt when you read the amendment as drafted by him. He wants to omit the words ' all elections ' and substitute the words ' all Federal elections '. I have no very great objection to his amendment provided he satisfies me on one point. I want to ask him whether or not he accepts the principle—and after all what we are concerned with is the principle—what I want to ask him is this—does he accept the principle that elections should be placed in the hands of an independent body outside the executive ? If he accepts that, personally, as I said, I will have no objection if it is agreed by the House that a similar clause which is contained in Clause 24 be introduced in the Provincial Part of the Constitution. I have no desire for centralisation. What we had in mind was that the elections should be taken out of the hands of the Government of the day.

[The Cabinet Mission had recommended the setting up of an advisory committee on Fundamental Rights, Minorities etc. Accordingly, the assembly constituted the Advisory Committee under the Chairmanship of Sardar Patel by a resolution on 24th January 1947. The Committee consisted of 50 members in which Dr. Ambedkar was one. To facilitate its work, the Advisory Committee appointed the following four subcommittees.

1. *Fundamental Rights sub-committee.*

2. Minorities sub-committee.
3. North-East Frontier Tribal Areas sub-committee.
4. Excluded and partially excluded areas (other than those in Assam) sub-committee.

Dr. Ambedkar was a member of the first two sub-committees and took keen interest in their deliberations. He also submitted a memorandum to the Fundamental Rights sub-committee in which he gave concrete shape, to his ideas. This memorandum was later published for wider circulation under the title ' States and Minorities, what are their rights and how to secure them in the Constitution of free India '.

The Constituent Assembly also appointed three other committees, namely (1) the Union Power Committee, (2) the Union Constitution Committee and (3) the provisional Constitution Committee. Prime Minister Pandit Jawaharlal Nehru was the Chairman of the first two committees while the third one was under the Chairmanship of Sardar Vallabh Bhai Patel. These Committees were set up by a resolution on 30th April 1947.

Dr. Ambedkar was member of the Union Constitution Committee. The report of the Committee was submitted to the President of the Assembly by its Chairman Pandit Nehru on 4th July 1947. The work done by Dr. Ambedkar in various sub-committees of the Assembly was considered very useful and convinced the Congress bosses beyond doubt that the legislation and solidification of freedom would not be easy without the services of Dr. Ambedkar. Consequent upon the partition of Bengal, Dr. Ambedkar ceased to be a member of the Constituent Assembly. The Congress Party which had earlier opposed tooth and nail his entry into the Constituent Assembly came forward and sponsored his candidature.

In his letter dated 30th June, 1947, Dr. Rajendra Prasad, President of the Constituent Assembly requested Mr. B. G. Kher, the then Prime Minister of Bombay to elect Dr. Ambedkar immediately. He wrote, " Apart from any other consideration we have found Dr. Ambedkar's work both in the Constituent Assembly and the various committees to which he was appointed to be of such an order as to require that we should not be deprived of his services. As you know, he was elected from Bengal and after the division of the Province he has ceased to be a member of the Constituent Assembly. I am anxious that he should attend the next session of the Constituent Assembly commencing from the 14th July and it is therefore necessary that he should be elected immediately".

Accordingly, Dr. Ambedkar was re-elected in July 1947 from Bombay as a member of the Constituent Assembly. Soon after, Prime Minister Nehru invited him to join the Cabinet he formed on 15th August 1947 on the eve of

independence. Dr. Ambedkar accepted the invitation and became India's first Law Minister. On 29th August the Assembly unanimously elected him as Chairman of the Drafting Committee which was assigned the task of framing the Constitution. Dr. Ambedkar, who was a strong opponent of Congress had now become their friend, philosopher and guide in the Constitutional matters.—Ed.)

SECTION TWO
August 14, 1947 to February 25, 1948

COMMITTEE TO SCRUTINISE DRAFT CONSTITUTION

Shri Satyanarayan Sinha : Sir, I beg to move—

" This Assembly resolves that a Committee consisting of—

- (1) Shri Alladi Krishnaswami Ayyar,
- (2) Shri N. Gopalaswami Ayyangar,
- (3) The Honourable Dr. B. R. Ambedkar,
- (4) Shri K. M. Munshi,
- (5) Saiyid Mohd. Saadulla,
- (6) Sir B. L. Mitter,
- (7) Shri D. P. Khaitan,

be appointed to scrutinise and to suggest necessary amendment to the Draft Constitution of India prepared in the Office of the Assembly on the basis of the decision taken in the Assembly ".

(The motion was adopted—Ed.)

REPORT OF THE CONSTITUENT ASSEMBLY FUNCTIONS COMMITTEE

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, I beg to move that this Assembly do proceed to take into consideration the Report on the functions of the Constituent Assembly under the Indian Independence Act, 1947, submitted by the Committee appointed by the President in pursuance of the decisions of the Assembly on the 20th August 1947.

Sir, the Report of the Committee has already been circulated to the Members of the House and, I do not think that, at this stage, when the Report has been in the hands of the Members at least for the last two days, I need expatiate at great length upon the work of this Committee. I think it would be enough if I, in the first instance, draw attention to the recommendations of the Committee.

Altogether the Committee has made five recommendations. Its first recommendation is that it is open to the Constituent Assembly to function as Legislature and that it should function as such; (2) that while functioning as Legislature it should adopt the rules of the Legislative Assembly as far as possible with necessary amendments ; (3) the necessary amendments should be made under the orders of the President of the Constituent Assembly ; (4) the work of the Constituent Assembly as a Constitution-making body and as an ordinary legislature should be separated and should be conducted in separate sessions to be held on separate days ; (5) the power of prorogation should vest in the President and not in the Governor-General as found in the Adaptation of the Government of India Act. After having made these recommendations, the Committee considered whether there were any difficulties which would stand in the way of giving effect to their recommendations and found three which they had to resolve in order to give effect to their recommendations.

The first was whether one and the same person should preside over both the bodies, the Constituent Assembly and the Legislature. This difficulty arose because section 22 of the Government of India Act, which related to the office of the Speaker, has been dropped by the Adaptations which have been carried out under the Indian Independence Act with the result that the President is the one person who has to preside over both, the Constitution-making body as well as the Legislature. Ordinarily speaking, this should not create any difficulty, but in the circumstance where for instance the President is a Minister of the State, this difficulty may arise. For instance, it would be an anomalous thing if the President who is a Minister of State also were to preside over; the Constituent Assembly when it was functioning as a law-making body. Consequently the Committee thought that either of two courses has to be adopted ; either the President should cease to be a Minister, or, if he continues to be a Minister, the Assembly should elect another officer to be called the Speaker or Deputy President whose functions it would be to preside over the Constituent Assembly when it is in session for the purpose of making laws.

The second difficulty, which the Committee came across, was with regard to the representatives of the States. The House will remember that the Constituent Assembly, when it will be meeting for the purposes of law making, would be operating upon the whole field which has been included in List No. 1 of the Seventh Schedule to the Government of India Act. The House also will recall that the States at the present moment have joined the Constituent Assembly on a basis of what is called the Instrument of Accession which does not altogether tally with the subjects included in List No. 1. In fact the subjects included in the Instrument of Accession fall considerably short of the subjects included in List No. 1. The question, therefore, that arises is this, whether a

body of people, who are Members of the Constituent Assembly and who are bound by the Instrument of Accession and have responsibility for a shorter number of items, should be permitted to take part in motions and in debates relating to certain other subjects which were not included in the list contained in the Instrument of Accession. There were of course two ways of dealing with this matter. One way of dealing with this matter was to adopt the procedure of what is called 'in and out', that they should sit in the Assembly and vote when an item which was being debated was common to both the Instrument of Accession as well as List No. I, and when an item was being discussed in the House which did not form part of the Instrument of Accession, they should not be permitted to participate. The Committee came to the conclusion that although theoretically the second course was more logical, from a practical point of view such a distinction need not be made in the circumstances in which we stand and, therefore, the Committee made the recommendation that notwithstanding the subjects contained in List No. I and the Instrument of Accession, the representatives of the Indian States should continue to take part in all motions that may relate to all subjects irrespective of the distinction between the two lists.

The third question, which the Committee felt they had to deal with, was the position of the Ministers. As the House knows, there are certain Ministers who are at present not Members of the Constituent Assembly. They are five in all who fall in that category. The question therefore arises for consideration whether the Ministers who are members of the Constituent Assembly should take part in the proceeding of the Constituent Assembly and also in the Legislature. So far as their participation in the work of the Legislature is concerned, the position is safeguarded by reason of the fact that Section 2 sub-clause (2) of the Government of India Act is retained by the Adaptation and Members of the House know under the provisions contained in Section 10 sub-clause (2) a person, notwithstanding the fact that he is not a Member of the Legislature, may still continue to participate in the work of the Legislature and be a Minister. Under that, therefore, the Ministers who are not Members of the Constituent Assembly will be eligible to sit in the Constituent Assembly when it functions as a Legislature, without ceasing to be Ministers of State.

The question that remains is, what is to happen with regard to their relationship to the Constituent Assembly. At present, as they are not Members of the Constituent Assembly, they are not entitled to participate in the work of the Constituent Assembly so far as it relates to the making of the Constitution. The Committee came to the conclusion that it was necessary that their guidance should be available to the Constituent Assembly in the matter of constitution-making and therefore just as Section 10 sub-clause (2) permits

them to participate in the work of the Legislature, so also the Constituent Assembly should make a provision which would permit Members of Government who are not Members of the Constituent Assembly also to participate in the work of the Constituent Assembly.

Sir, there are two other matters about which the Committee has made no recommendation and it is necessary that I should refer to them. The first matter is the question of double membership. As the House knows there are certain Members of the Constituent Assembly who are also Members of the Provincial Legislature. So far there is no anomaly, because the Constituent Assembly is not a Legislature. But when the Constituent Assembly begins to function as a Legislative Body, this conflict due to double membership will undoubtedly arise. I might also draw attention to the provision contained in Section 68 (2) of the Government of India Act which deals with this matter. Section 68 (2) did not permit a member to hold double membership of two Legislatures, the Central or Provincial. But this provision has now been dropped by the adaptation. Consequently, it is permissible for Members of the Constituent Assembly when they are functioning as Members of the Legislature also to be Members of another Legislative Body. The anomaly, of course, purely and from a strictly constitutional point of view does remain. It is for the Constituent Assembly to decide whether they will accept the principle embodied in the omission of Section (58 (2) and permit double membership or whether notwithstanding the dropping of Section 68 (2) they will take such suitable action as to prevent double membership.

Second question about which the Committee has made no recommendation is relating to the administrative organisation of the Assembly. As the administrative organisation in the Assembly is a single unified organisation, it is under the exclusive control of the President of the Constituent Assembly. So long as the Constituent Assembly had only this single and solitary function to perform, namely, to prepare the constitution, there was no difficulty in this matter. But when the Constituent Assembly will function in its double capacity, once as the Constitution-making body and another time as a law-making body with another person at the head of it, namely, the Speaker or the Deputy Speaker, questions with regard to the adjustment of the staff may arise. But the Committee thought that they were not entitled under the terms of reference to deal with this matter and therefore did not make any reference to it at all.

Sir, I do not think it is necessary for me to take the time of the House any more than I have done. I think what I have said will sufficiently remind Members of what the Committee has done and will enable them to proceed to deal with the report in the best way they like.

Mr. President : I think we have had enough discussion on this, I would now call upon Dr. Ambedkar to reply.

The Honourable Dr. B. R. Ambedkar : Mr. President, the report made by the Committee obviously has received a mixed reception. Some members of the House have described it as a messy document. I do not propose to give any reply to those who have described the Report in those terms, because personally I think that the arguments advanced by them do not deserve sufficient consideration. All that I propose to do in reply is to meet some technical points which have been raised by my friends Dr. Deshmukh and Mr. Biswanath Das. Dr. Deshmukh refers to two recommendations made by the Committee. One was the recommendation relating to the permission to be granted to the Members representing the States for taking part in all the deliberations of the Committee. The second recommendation to which he referred was the recommendation in respect of the Ministers of the State to whom the Committee said it might not be desirable to permit to take part also in the proceedings of the Assembly. Dr. Deshmukh said that all that the Committee observed was logical or convenient. The Committee did not say whether this was constitutional. I am very much surprised at the question particularly because Dr. Deshmukh happens to be a lawyer. As a matter of fact he ought to have realised that we have really no constitution at all. The Constituent Assembly is making a Constitution, and anything that the Constituent Assembly does would be constitutional (*Hear, hear*). If the Constituent Assembly say that the State representatives should not take part that would be perfectly constitutional. If the Constituent Assembly said that they should, that would also be perfectly constitutional. Therefore that sort of observation I thought was entirely misplaced. With regard to the point raised by my friend Mr. Biswanath Das, I also feel a considerable amount of surprise that he should have thought fit to make the observations he made. If I remember correctly what he said, his observations related to two points. He said that the Committee was dividing the Constituent Assembly into two parts, that it was an indivisible body, that it was functioning as an integral, one whole. Well, I do not know whether he is not in a position to appreciate that the working of a constitution is quite different from the making of ordinary law. The distinction, it seems to me to put it in a nutshell, is that the Constituent Assembly is not bound by the Constitution. But a Legislature is bound by the Constitution. When the Constituent Assembly functions as a Legislature it would be bound by the Government of India Act as adapted under the Independence Act. Anybody would be in a position to raise a point of order. Anybody would be in a position to say whether a particular motion is *ultra virus* or *intra virus*. But such a

question can certainly not arise when the Constituent Assembly is functioning as a body framing the Constitution. And I thought that was a sufficiently substantial distinction to enable us to understand notionally at any rate that the two functions were different, that the purposes were different, that the work was different and if we are intending to avoid confusion, the practical way of doing so would be let the Constituent Assembly meet in a separate session as distinct from a legislature. He also raised some grouse against the adaptations. Now, I must frankly say that no one here is responsible for the adaptations that have been introduced in the Government of India Act, 1935.

If he refers to section 8 sub-clause (1) of the Indian Independence Bill, he will realise that under that section the power of adapting the Government of India Act of 1935 to suit the new status, which the Constituent Assembly has as a legislature, has been vested entirely in the Governor-General. I think it is possible that the Governor-General did take advice from some source in order to decide what adaptations to introduce. Therefore, at the present moment, nobody is responsible for it. If the Constituent Assembly is not satisfied with the adaptations, which have, been introduced in the Government of India Act, the very same Section 8 sub-clause (1) states that the Constituent Assembly would be perfectly within its competence to change the adaptations and to introduce any other that it may like. I therefore, submit, Sir, that there is no substance in the points that have been raised by the critics of the Committee.

One other point to which my friend Mr. Krishnamachari referred. He said that Mr. Munshi's resolution omitted to take into account the second part of the report which dealt with the question that the President was the sole authority both on the deliberative and administrative side. He questioned why the resolution which has been framed and submitted to us by Mr. Munshi, practically accepting all the proposals of the Committee did not contain this particular provision. I should like to say that if Mr. Krishnamachari reads the report carefully, he will find that that particular part of the report is an observation on the part of the Committee and not a recommendation and therefore. I submit my friend Mr. Munshi was perfectly justified in not referring to it.

Pandit Lakshmi Kanta Maitra : Sir, I want to ask Dr. Ambedkar certain information. First of all I want to know from him..... etc.

An Honourable Member : Is it a speech or a question ?

Mr. President : I would remind Pandit Maitra that he cannot make a speech. He has put the question and Dr. Ambedkar will answer if he chooses.

An Honourable Member : Even the question is out of order.

Pandit Lakshmi Kanta Maitra : Why is it not permissible ? When the Honourable member replies to the debate and an Honourable member does

not understand, he is perfectly within his right in asking further questions to get points cleared up.

Mr. President : You have put the question. Dr. Ambedkar will reply.

The Honourable Dr. B. R. Ambedkar : I shall be brief. The first question was whether we contemplate any change in the adaptations of the Government of India Act. My answer is that that is a matter for the House to determine what adaptations the House wants. But I want to assure my friends here that we have got the power to change the adaptations. The Government of India Act with its adaptations is not entirely binding on us in the sense that a change is not beyond our purview. If the House, on a reconsideration of the matter, finds that certain adaptations ought to be changed, it would be perfectly possible to undertake that provision.

The second question which my Honourable Friend Mr. Maitra put to me was whether the unity of administration is likely to be affected and there is likely to be a conflict in view of the fact that there may be two offices, one President presiding over the Constituent Assembly and secondly a Speaker presiding over the legislative body. What the Committee has said is that there is a theoretical possibility of conflict. But I take it that there need not necessarily be a conflict. In practice, it should be perfectly possible for the two offices, the President and the Speaker of the Assembly to work in union and to so arrange the timing of the Constituent Assembly as well as the legislative body in perfect order so that notwithstanding the fact that we have two offices, we need not be afraid that there would necessarily be a conflict.

With regard to the third question, obviously, the arrangement that we are making now for the purpose of converting the Constituent Assembly into a legislative body, undoubtedly will be temporary. It would last so long as the function of Constitution-making has not been completed. When the function of Constitution-making is completed, obviously one or the other arrangement would vanish and we shall then continue only to function as a legislature.

Mr. Naziruddin Ahmad : One more question. The Honourable member has said that re-adaptation may be made by the House. Is it possible for the Governor-General to make further adaptations?

The Honourable Dr. B. R. Ambedkar : It is a question of law. This House has power to change the adaptation.

Mr. Naziruddin Ahmad : I do not deny that. That question is whether in the opinion of the Honourable member, the Governor-General can make further adaptation.

The Honourable Dr. B. R. Ambedkar : He cannot, because he will have to act on the advice of his Ministers.

Mr. Naziruddin Ahmad : Whether he can do so on the advice of his

Ministers?

An Honourable Member: Is this a law court, or a cross examination.

The Honourable Dr. B. R. Ambedkar : I am not sure and I do not like to give an offhand answer.

Mr. President : I think we have to put the motion clause by clause as was suggested.

[Clause by Clause motions were adopted. Thereafter the resolution as under was adopted.—Ed.]

Mr. President: The question is: That the Resolution as a whole be adopted, namely:

" 1. That with reference to the Motion by the Honourable Dr. B. R. Ambedkar regarding the consideration of the Report on the functions of the Constituent Assembly under the Indian Independence Act, it is hereby resolved that—

(i) The functions of the Assembly shall be— (a) to continue and complete the work of Constitution-making which commenced on the 9th December, 1946, and (b) to function as the Dominion Legislature until a Legislature under the new Constitution comes into being.

(ii) The business of the Assembly as a Constitution-making body should be clearly distinguished from its normal business as the Dominion Legislature, and different days or separate sittings on the same day should be set apart for the two kinds of business.

(iii) The recommendations contained in para. 6 of the Report regarding the position of representatives of Indian States in the Assembly be accepted.

(iv) Suitable provision should be made in the Rules of the Constituent Assembly for the election of an officer to be designated the Speaker to preside over the deliberations of the Assembly when functioning as the Dominion Legislature.

(v) The power of summoning the Assembly for functioning as the Dominion Legislature and proroguing it should vest in the President.

(vi) Ministers of the Dominion Government, who are not members of the Constituent Assembly, should have the right to attend and participate in its work, of Constitution-making though until they become members of the Constituent Assembly they should not have any right to vote.

(vii) Necessary modifications, adaptations and additions should be made—

(a) by the President of the Constituent Assembly to the Rules and Standing Orders of the Indian Legislative Assembly to bring them into accord with the relevant provisions of the Government of India Act as adapted under the Indian Independence Act, 1947. (h) the Constituent Assembly or the President, as the case may be to the Rules and Standing Orders to carry out the provisions of

para. 9 of the Report and where necessary to secure an appropriate adaptation of the relevant section of the Government of India Act to bring it into conformity with the new Rule ".

ADDITIONAL REPRESENTATION TO EAST PUNJAB

Mr. President: Just to avoid longer discussion may I make a statement with regard to the procedure that has been followed in connection with this particular resolution ? The matter came up before the Steering Committee and the Steering Committee felt that it was necessary to refer it to a very small committee to go into these figures. This committee consisted of—

Dr. B. R. Ambedkar,
Diwan Chaman Lall,
Giani Gurmukh Singh Musafir,
Mr. Rafi Ahmed Kidwal, and
Mr. Ananthasayanam Ayyangar,

and after taking into consideration all these figures and such information as was available with regard to the migration of population from one side to the other the Committee made certain recommendations on the basis of which the Resolution has come before the House. The matter has been considered by a Sub-Committee which I had appointed on the recommendation of the Steering Committee. Of course it is open to the House to accept it or not. I thought I had better explain that position. I am sorry that the report of that Sub-Committee not been circulated and only the Resolution has been circulated. If that report had been before the members probably much of the discussion might have been avoided but that has not been done. I am sorry.

ADDITION OF NEW RULES 38-A TO 38-V to the Constituent Assembly Rules

Shrimati G. Durgabai (Madras : General) : Mr. President, Sir, I beg to move the motion that stands in my name, namely:—

That the following amendments to the Constituent Assembly Rules be taken into consideration:—

After Rule 38. insert the following :—

The proposed Rules lay down in a Chapter. Chapter VI-A, the procedure for legislation for making provision as to the Constitution of India. They spread over above 22 Sections from 38-A to 38-B, and are divided into two categories.

[This motion was followed by this discussion. Then Dr. Ambedkar rose to reply to *the* criticism.—Ed.)

The Honourable Dr. B. R. Ambedkar : (Bombay : General) : Mr. President, Sir, I rise to explain some of the criticisms which have been levelled by Mr. Santhanam against the Motion moved by Shrimati Durgabai proposing the adoption of certain Rules by this Constituent Assembly. One of the criticisms levelled against her proposal is by Mr. Santhanam. Mr. Santhanam's main criticism is that the existing Rule 24 is quite sufficient for the purpose we have in view and that no new Rules are necessary. I am sure that Mr. Santhanam has not given enough attention to the question when he rose to oppose the motion. Rule No. 24 speaks of a motion and says that anything can be done in this House by a Motion. That is quite true. But I am sure that Mr. Santhanam has failed to realise that this omnibus Rule will not suffice and that further detailed Rules are necessary. For motions fall into two categories. There is a motion, which has no further stage; it is exhausted by the decision taken by the House on that particular motion. But there is also another category of motions, which involve further stages. A particular illustration of a motion of this sort is a motion introducing a Bill. A Bill which is introduced by a motion is not exhausted by that particular motion if the House decided in favour of that motion. There are further stages which have to be gone through and it is therefore very necessary that the further stages of a motion of this sort should be regulated by specific rule. I think if my friend Mr. Santhanam had referred to the Constituent Assembly (Legislative) Rules he could have seen that the provision which has been made in the new rules which was moved by Shrimati Durgabai was modelled on the provisions contained in the rules and the standing orders of the Constituent Assembly. For instance, he will find that analogous to Rule No. 24 in the rules of the Constituent Assembly there is Standing Order No. 30 worded exactly in the same terms as Rule No. 24. Notwithstanding that, there is a further Standing Order *i.e.* No. 37, which provides for bills and which lays down what further motions can be moved in the House with regard to them and therefore, on that footing the proposal made for adopting the new rule is in line with the procedure adopted by the Constituent Assembly in its legislative capacity. I should think that if the Constituent Assembly rested purely on rule No. 24 for carrying out its business in so far as it related to legislation, there is not the slightest doubt in my mind that there would be utter chaos. If there was only Rule 24 there could be no limit as to the number of motions or the nature of motions that one could move. In the Legislative Assembly rules Honourable

Members will find that after a Bill has been introduced there are only three motions, which are permitted. One is motion to circulate, motion to refer the Bill to a Select Committee or motion to pass the Bill. If we had nothing but Rule 24 to govern our proceedings it would be open for any member to move any sort of motion, which he may fancy. Indeed it would be necessary in certain cases not to allow freedom to move any one of these three motions. In our procedure for the purpose of passing the Bill embodying our new constitution we have curtailed the list of motions that could be moved by a member. In The new rules proposed we have not permitted a motion for the circulation of the constitution because we think that would be dilatory. In short what is important to bear in mind is that unless these rules were adopted, it would be quite impossible to control the further stages of the Bill and therefore the point raised by Mr. Santhanam is, I think, a point without substance.

The other point of criticism levelled by Mr. Santhanam relates to one of the new Rules, which requires the assent of the Governor-General to the passing of a Bill adopted by the Constituent Assembly. As the Members of this House will remember, the Committee, which reported on the bifurcation of the functions of the Constituent Assembly into (1) Constituent Assembly for making laws relating to the Constitution and (2) Dominion Legislature for making ordinary law, divided the work of the Constituent Assembly into two parts, one part related to the making *of the future* constitution and the other relating to the amending of the existing Constitution as contained in the Government of India Act, 1935, and the Indian Independence Act of 1947. With regard to its power to make and pass the future Constitution the Governor-General has no place. His assent is not necessary. The Constituent Assembly is supreme. Not merely is the assent of the Governor-General not necessary, but even the assent of the President is not required by the Rules now prepared. *The only power which the President has been given after the Constitution has been passed by this Assembly is to sign it merely as a token that that is the final Act of Constitution. It is not assent in the ordinary sense of the word. The assent of the Governor-General has been retained with regard to the amendment of the existing constitution. I know there are certain members who feel hurt that such a provision should have been retained. But, I will tell the House that this matter was considered by the best lawyers that were available and they all came to the conclusion that the retention of the assent of the Governor-General was not only desirable but necessary. I should like to explain the reasons. In the first place, as everybody knows, the Governor-General possesses the power of adapting the Constitution. Adaptation is merely another name for amending the Constitution. There is not much difference between adapting the Constitution and amending the Constitution. They are just one and the same thing. The*

question that arises is that if it is necessary that the Governor-General should have the power to amend the Constitution in the form of adapting it. what harm can there be if the power was retained with regard to a Bill as distinguished from adaptation which has the same purpose, namely, the amendment of the Constitution.

Shri K. Santhanam : May I know why then you want the Bill at all ?

The Honourable Dr. B. R. Ambedkar : The answer is simple, after all, the power of adaptation will be exhausted by the 31st of March. What is to happen thereafter if the necessity for amending the existing Constitution arose? Of course if the power of adaptation comes to an end, on the 1st of April and if our future Constitution also became operative on the 1st of April, the problem would not arise at all. There would be the new Constitution taking complete possession of the territory occupied by the existing Constitution. But, we are not quite sure that such would not be the case. It may be there might be a time lag between the commencement of the new Constitution and the first of April 1948. It may be a month or two may elapse between the 31st of March and the commencement of the Constitution. It is also equally clear that the whole of the Constitution as framed and passed by this House may not come into operation all at once. It may come into operation in parts. There may be transitional provisions, supplementary provisions for the purpose of defining constituencies for the purpose of giving effect to what are called incidental matters. All that requires undoubtedly some time. Consequently, the process of adapting the Constitution which will come to an end by the 31st March will have to be continued and it can be continued only by the known process of a Bill passed by this House.

In the light of this it will be clear that a provision for changing the existing Constitution by a Bill is necessary. Those who realise this fact and also realise that the purpose of adaptation is the same as that of the Bill amending the Constitution cannot question the validity of the provision for requiring the Governor-General's assent to the Bill. If the purpose of both is the same and if adaptation requires assent of the Governor-General, the question that arises is, why should a Bill of amendment not require the assent of the Governor-General? Certainly, there is no logical inconsistency at all. I may further point out that the committee was to a large extent guided by the provision contained in sub-clause (3) of section 6 of the Independence Act which says that all laws passed by the Dominion Legislature will be assented to by the Governor-General. What that clause means is a matter of uncertainty today. The Governor-General has the power to assent. The question is, does it mean That the Assembly is bound to submit a Bill amending The existing Constitution to the Governor-General by virtue of the fact that he is endowed with the power by

the Independence Act to give his assent ? We were not able to give any categorical opinion. We thought that notwithstanding feasibility of the argument that merely because of the existence of sub-clause (3) in section 6 there is no obligation to submit the Amending Bill to the Governor-General for his assent, a court of law may hold otherwise and declare an Act passed by this Assembly, not submitted to the Governor-General for assent, as being *ultra virus* and we did not want that legislation passed by this Assembly should be put in that sort of jeopardy. It is therefore out of abundant caution and also out of the feeling that there was nothing illogical in it that we inserted the new Rule. I hope the House will understand that whatever has been done by the Drafting Committee, to which this matter was referred, is perfectly in order and that the points raised by Mr. Santhanam and the friends who followed him have really no substance in them.

Mr. President : Before I put the motion to vote, I would like to ask the Mover whether she would like to say anything in reply.

Shri M. Ananthasayanam Ayyangar : Before that. Sir, I beg your permission to interrupt for a little while. I would like to ascertain from the Honourable Dr. Ambedkar whether he has considered the consequences that would follow if this motion is adopted, because, under Section 32 of the Government of India Act as adapted, the Governor-General has the right either to give or withhold his assent when a Bill is referred to him. Are we contemplating that so far as a Bill seeking to amend the existing constitution is concerned, the Governor-General shall have the power either to give or withhold his consent?

The Honourable Dr. B. R. Ambedkar : He is a constitutional Governor. He acts on advice.

Shri M. Ananthasayanam Ayyangar : Another point which requires elucidation is this. It is laid down that when the Dominion Legislature passes a Bill, that Bill will require the assent of the Governor-General. But does this apply in so far as amendment of the present Constitution is concerned, because we are not sitting here as Dominion Legislature, but as the Constituent Assembly of India, which is a sovereign body? That is why I say you have the power, as President. We do not even say Speaker here. Does the Honourable Dr. Ambedkar realise that just as the new Constitution is not going to be referred to the Governor-General, the amendment of the existing Constitution also need not be referred to him?

Mr. President : That is a point which Dr. Ambedkar has answered in his own way. Whether the member is satisfied or not is a different question. I shall now call upon the Mover if she wishes to say anything in reply.

Shrimati G. Durgabai : Mr. President, Sir, I do not think there is much left for me to say in reply, because Dr. Ambedkar has very kindly taken upon himself to explain the whole position as well as answer the points raised by my Honourable friends. I think he has sufficiently met them and clarified the whole position, but I appreciate that much has been said by some of the members about the provision retained here about the assent of the Governor-General with regard to Bills referred to in 38-A. Dr. Ambedkar dealt with that point also, so I need not say much about it. but I would like to remind Honourable members of this fact that we are governed today by the 1935 Act as adapted which still retains that provision.....

[The motion of Smt. Durgabai was adopted.—Ed.]

Mr. President ; Mr. Naziruddin Ahmad can move his amendment.

Mr. Naziruddin Ahmad : Sir, I beg to move—

That in the proposed rule 38-B, for the words "Introduce a Bill" the words "Introduce such a Bill" he substituted.

Sir, this amendment is necessary because the Bill is qualified in the earlier part of the clause and the addition of The word " such " will make it very clear.

The Honourable Dr. B. R. Ambedkar: Sir, if I may reply to this point. If the Honourable Mover will only refer to the heading of the chapter he will see that the chapter is called " Legislation for making provisions. on as to the Constitution of India ". These rules relate to no other Bill except the Bill amending the Constitution. Therefore the word " such " is absolutely unnecessary.

Mr. Naziruddin Ahmad: After this clarification, Sir, I beg leave to withdraw.

The amendment was, by leave of the Assembly, withdrawn.

The Honourable Dr. B. R. Ambedkar: Sir, If I may make a suggestion with a view to economise time. These are all drafting amendments. If this House were to pass a resolution that all these amendments should be taken into consideration by the official draftsmen and incorporated wherever he thinks necessary, that will be better. If we were to take up the amendments one by one, it will take more than a whole day. After all different people use different language for the purpose of conveying the same thought. It is better to leave it to the draftsmen who are particularly qualified in this matter than laymen who merely want to exercise their time in this matter.

[Rule 38-B was adopted.—Ed.]

[The *Drafting Committee* first met on August 30, 1947 and elected Dr. Ambedkar as its Chairman unanimously. The Committee sat from October 27, 1947 day to day, discussing and revising articles of the Draft prepared by the office of the Constitutional adviser. The Committee met in all on 44 days till

February 13, 1948 in which Dr. Ambedkar himself conducted all the business. Fresh Draft of the Constitution as settled by the Drafting Committee was submitted to the President of the Assembly on February 21, 1948. The Committee continued to function and dealt with suggestions for amendments made from time to time. The Draft Constitution had been before the public for eight months and came up before the Constituent Assembly for discussion on 4th November 1948.—Ed.]

SECTION THREE

November 4,1948 to November 9,1948

FIRST READING of THE DRAFT CONSTITUTION

The Constituent Assembly of India met in the Constitution Hall, New Delhi on Thursday the 4th November 1948.

After completing the formalities of presentation of credentials, signing the register and taking the pledge, the President, Hon'ble Dr. Rajendra Prasad addressed the Members to rise. in their seats to pay homage and reverence to the Father of the Nation. He described Mahatma Gandhi as one, ' who breathed life into our dead flesh and bones, who lifted us out of darkness of despondency and despair to the light and sunshine of hope and achievement and who led us from slavery to freedom.

The Members stood up in silence.

Thereafter, the deaths of Quaid-E-Azam Mohamed Ali Jinnah, Shri D. P. Khaitan and Shri D. S. Gurung, were also mourned by standing in the seat and observing silence.

At the outset the Assembly discussed the Motion moved by Smt. G. Durgabai from Madras, which was the amendment to Constituent Assembly Rules 5-A & 5-B. This was accepted by the House.

Then the President, Dr. Rajendra Prasad rose and addressed the House. He explained what would be the programme of the business. This was followed by discussion.

In the afternoon session, the President called upon Dr. Ambedkar to move his motion. Accordingly, Dr. Ambedkar introduced the Draft Constitution to the Assembly for consideration.

After the Draft Constitution was presented to the Constituent Assembly on 4th November 1948, a brief general discussion followed, which is called the first reading of the Constitution. The second reading commenced on 15th November 1948. In the second reading the Constitution was discussed clause by clause in detail. The discussion concluded on 17th October 1949.

The Constituent Assembly again sat on the 14th November 1949 for the third reading. This was finished on the 26th November 1949 when the Constitution was declared as passed and thereafter the President of the Assembly signed it.

The Draft Constitution is placed in this part as Annexure. It will help the reader to understand the clauses and the discussion thereon by referring to the original articles.

-----Edifor

Draft Constitution—Discussion

MOTION re DRAFT CONSTITUTION

Mr. President: I think we shall now proceed with the discussion. I call upon the Honourable Dr. Ambedkar to move his motion.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, I introduce the Draft Constitution as settled by the Drafting Committee and move that it be taken into consideration.

The Drafting Committee' was appointed by a Resolution passed by the Constituent Assembly on August 29, 1947.

The Drafting Committee was in effect charged with the duty of preparing a Constitution in accordance with the decisions of the Constituent Assembly on the reports made by the various Committees appointed by it such as the Union Powers Committee, the Union Constitution Committee, the Provincial Constitution Committee and the Advisory Committee on Fundamental Rights, Minorities, Tribal Areas, etc. The Constituent Assembly had also directed that in certain matters the provisions contained in the Government of India Act, 1935, should be followed. Except on points, which are referred to in my letter of The 21st February 1948 in, which I have referred to the departures made and alternatives suggested by the Drafting Committee, I hope the Drafting Committee will be found to have faithfully carried out the directions given to it.

The Draft Constitution as it has emerged from the Drafting Committee is a formidable document. It contains 315 Articles and 8 Schedules. It must be admitted that the Constitution of no country could be found to be so bulky as the Draft Constitution. It would be difficult for those who have not been through it to realise its salient and special features.

The Draft Constitution has been before the public for eight months. During this long time friends, critics and adversaries have had more than sufficient time to express their reactions to the provisions contained in it. I dare say that some of them are based on misunderstanding and inadequate understanding of the Articles. But there the criticisms are and they have to be answered.

For both these reasons it is necessary that on a motion for consideration I should draw your attention to the special features of the Constitution and also meet the criticism that has been levelled against it.

Before I proceed to do so I would like to place on the table of the House Reports of three Committees appointed by the Constituent Assembly (1) Report of the Committee on Chief Commissioners Provinces (2) Report of the Expert Committee on Financial Relations between the Union and the States, and (3) Report of the Advisory Committee on Tribal Areas, which came too late to be considered by that Assembly though copies of them have been circulated to Members of the Assembly. As these reports and the recommendations made therein have been considered by the Drafting Committee it is only proper that the House should formally be placed in possession of them.

Turning to the main question. A student of Constitutional Law, if a copy of a Constitution is placed in his hands, is sure to ask two questions. Firstly, what is the form of Government that is envisaged in the Constitution; and secondly, what is the form of the Constitution? For these are the two crucial matters which every Constitution has to deal with. I will begin with the first of the two questions.

In the Draft Constitution there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of this functionary reminds one of the President of the United States. But beyond identity of names there is nothing in common between the forms of government prevalent in America and the form of Government proposed under the Draft Constitution. The American form of Government is called the Presidential system of Government. What the Draft Constitution proposes is the Parliamentary system. The two are fundamentally different.

Under the Presidential system of America, the President is the Chief head of the Executive. The administration is vested in him. Under the Draft Constitution the President occupies the same position as the King under the English Constitution. He is the head of the State but not of the Executive. He represents the Nation but does not rule the Nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device on a seal by which the nation's decisions are made known. Under the American Constitution the President has under him Secretaries in charge of different Departments. In like manner the President of the Indian Union will have under him Ministers in charge of different Departments of administration. Here again there is a fundamental difference between the two. The President of the United States is not bound to accept any advice tendered to him by any of his Secretaries. The President of the Indian Union will be generally bound by the advice of his Ministers. He can do nothing contrary to their advice nor can he do anything without their advice. The President of the United States can dismiss any Secretary at any time. The President of the Indian Union has no power to do so, so long as his Ministers command a majority in Parliament.

The Presidential system of America is based upon the separation of the Executive and the Legislature. So that the President and his Secretaries cannot be members of the Congress. The Draft Constitution does not recognise this doctrine. The Ministers under the Indian Union are members of Parliament. Only members of Parliament can become Ministers. Ministers have the same rights as other members of Parliament/namely that they can sit in Parliament take part in debates and vote in its proceedings. Both systems of Government are of course democratic and the choice between the two is not very easy. A democratic executive must satisfy two conditions—(1) It must be a stable executive and (2) it must be a responsible executive. Unfortunately it has not been possible so far to devise a system, which can ensure both in equal degree. You can have a system, which can give you more stability but less responsibility, or you can have a system, which gives you more responsibility but less stability. The American and the Swiss systems give more stability but less responsibility. The British system on the other hand gives you more responsibility but less stability. The reason for this is obvious. The American Executive is a non-Parliamentary Executive, which means that it is not dependent for its existence upon a majority in the Congress, while the British system is a Parliamentary Executive, which means that it is dependent upon a majority in Parliament. Being a non-Parliamentary Executive, the Congress of the United States cannot dismiss the Executive. A Parliamentary Government must resign the moment it loses the confidence of a majority of members of Parliament. Looking at it from the point of view of responsibility, a non-Parliamentary Executive being independent of Parliament tends to be less responsible to the Legislature, while a Parliamentary Executive being more dependent upon a majority in Parliament become more responsible. The Parliamentary system differs from a non-Parliamentary system in as much as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non-Parliamentary system, such as the one that exists in the U.S.A., the assessment of the responsibility of the Executive is periodic. It takes place once in two years. It is done by the Electorate. In England, where the Parliamentary system prevails, the assessment of responsibility of the executive is both daily and periodic. The daily assessment is done by members of Parliament, through Questions, Resolutions, No confidence motions. Adjournment motions and Debates on Addresses. Periodic assessment is done by the Electorate at the time of the election, which may take place every five years or earlier. The daily assessment of responsibility which is not available under the American system is, it is felt, far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the

Parliamentary system of Executive has preferred more responsibility to more stability.

So far I have explained the form of Government under the Draft Constitution. I will now turn to the other question, namely, the form of the Constitution.

Two principal forms of the Constitution are known to history—one is called Unitary and other Federal. The two essential characteristics of a Unitary Constitution are: (1) the supremacy of the Central Polity and (2) the absence of subsidiary Sovereign polities. Contrariwise, a Federal Constitution is marked : (1) by the existence of a Central polity and subsidiary polities side by side, and (2) by each being sovereign in the field assigned to it. In other words. Federation means the establishment of a Dual Polity. The Draft Constitution is. Federal Constitution inasmuch as it establishes what may be called a Dual Polity. This Dual Polity under the proposed Constitution will consist of the Union at the Centre and the States at the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. The dual polity resembles the American Constitution. The American polity is also a dual polity, one of it is known as the Federal Government and the other States, which correspond, respectively to the Union Government and the States Government of the Draft Constitution. Under the American Constitution the Federal Government is not a mere league of the States nor are the States administrative units or agencies of the Federal Government. In the same way the Indian Constitution proposed in the Draft Constitution is not a league of States nor are the States administrative units or agencies of the Union Government. Here, however, the similarities between the Indian and the American Constitution come to an end. The differences that distinguish them are more fundamental and glaring than the similarities between the two.

The points of differences between the American Federation and the Indian Federation are mainly two. In the U.S.A. this dual polity is followed by a dual citizenship. In the U.S.A. there is a citizenship of the U.S.A. But there is also a citizenship of the State. No doubt the rigours of this double citizenship are much assuaged by the fourteenth amendment to the Constitution of the United States which prohibits the States from taking away the rights, privileges and immunities of the citizen of the United States. At the same time, as pointed out by Mr. William Andersen, in certain political matters, including the right to vote and to hold public office. States may and do discriminate in favour of their own citizens. This favouritism goes even farther in many cases. Thus to obtain employment in the service of a State or Total Government one is in most places required to be a Total resident or citizen. Similarly in the licensing of persons for the practice of such public professions as law and medicine, residence or

citizenship in the State is frequently required ; and in business where public regulation must necessarily be strict, as in the sale of liquor, and of stocks and bonds, similar requirements have been upheld.

Each State has also certain rights in its own domain that it holds for the special advantage of its own citizens. Thus wild game and fish in a sense belong to the State. It is customary for the States to charge higher hunting and fishing license fees to non-residents than to its own citizens. The States also charge non-residents higher tuition in State Colleges and Universities, and permit only residents to be admitted to their hospitals and asylums except in emergencies.

In short, there are a number of rights that a State can grant to its own citizens or residents that it may do legally deny to non-residents, or grant to non-residents only on more difficult terms than those imposed on residents. These advantages, given to the citizen in his own State, constitute the special rights of State citizenship. Taken all together, they amount to a considerable difference in rights between citizens and non-citizens of the States. The transient and the temporary sojourner is everywhere under some special handicaps.

The proposed Indian Constitution is a dual polity with a single citizenship. There is only one citizenship for the whole of India. It is Indian citizenship. There is no State citizenship. Every Indian has the same rights of citizenship no matter in what State he resides.

The dual polity of the proposed Indian Constitution differs from the dual polity of the U.S.A. in another respect. In the U.S.A. the Constitutions of the Federal and the State Governments are loosely connected. In describing the relationship between the Federal and State Governments in the U.S.A. Bryce has said:

" The Central or National Government and the State Governments may be compared to a large building and a set of smaller buildings standing on the same ground, yet distinct from each other. "

Distinct they are, but how distinct are the State Governments in the U.S.A. from the Federal Government ? Some idea of this distinctness may be obtained from the following facts :

1. Subject to the maintenance of the republican form of Government, each State in America is free to make its own Constitution.
2. The people of a State retain forever in their hands, altogether independent of the National Government, the power of altering their Constitution.

To put it again in the words of Bryce:

" A State (in America) exists as a commonwealth by virtue of its own Constitution, and all State Authorities, legislative, executive and judicial are the creatures of, and subject to the Constitution. "

This is not true of the proposed Indian Constitution. No States (at any rate those in Part 1) have a right to frame its own Constitution. The Constitution of the Union and of the States is a single frame from which neither can get out and within which they must work.

So far I have drawn attention to the differences between the American Federation and the proposed Indian Federation. But there are some other special features of the proposed Indian Federation which mark it of not only from the American Federation but also from all other Federations. All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand the Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war it is so designed as to make it work as though it was a unitary system. Once the President issues a Proclamation, which he is authorised to do under the Provisions of Article 275, the whole scene can become transformed and the State becomes a unitary State. The Union under the Proclamation can claim if it wants (1) the power to legislate upon any subject even though it may be in the State list, (2) the power to give directions to the States as to how they should exercise their executive authority in matters which are within their charge. (3) the power to vest authority for any purpose in any officer, and (4) the power to suspend the financial provisions of the Constitution. Such a power of converting itself into a unitary State no federation possesses. This is one point of difference between the Federation proposed in the Draft Constitution, and all other Federations we know of.

This is not the only difference between the proposed Indian Federation and other Federations. Federalism is described as a weak if not an effective form of Government. There are two weaknesses from which Federation is alleged to suffer. One is rigidity and the other is legalism. That these faults are inherent in Federalism, there can be no dispute. A Federal Constitution cannot but be a written Constitution and a written Constitution must necessarily be a rigid Constitution. A Federal Constitution means division of Sovereignty by no less a sanction than that of the law of the Constitution between the Federal Government and the States, with two necessary consequences (1) that any invasion by the Federal Government in the field assigned to the States and *vice versa* is a breach of the Constitution and (2) such breach is a justifiable matter to be determined by the Judiciary only. This being the nature of federalism, a Federal Constitution cannot escape the charge of legalism. These faults of a Federal Constitution have been found in a pronounced form in the Constitution of the United States of America.

Countries, which have adopted Federalism at a later date, have attempted to reduce the disadvantages following from the rigidity and legalism, which are inherent therein. The example of Australia may well be referred to in this matter. The Australian Constitution has adopted the following means to make its federation less rigid:

(1) By conferring upon the Parliament of the Commonwealth large powers of concurrent Legislation and few powers of exclusive Legislation.

(2) By making some of the Articles of the Constitution of a temporary duration to remain in force only " until Parliament otherwise provides. "

It is obvious that under the Australian Constitution, the Australian Parliament can do many things, which are not within the competence of the American Congress and for doing which the American Government will have to resort to the Supreme Court and depend upon its ability, ingenuity and willingness to invent a doctrine to justify in the exercise of authority.

In assuaging the rigour of rigidity and legalism the Draft Constitution follows the Australian plan on a far more extensive scale than has been done in Australia. Like the Australian Constitution, it has a long list of subjects for concurrent powers of legislation. Under the Australian Constitution concurrent subjects are 39. Under the Draft Constitution they are 37. Following the Australian Constitution there are as many as six Articles in the Draft Constitution, where the provision are of a temporary duration and which could be replaced by Parliament at any time by provisions suitable for the occasion. The biggest advance made by the Draft Constitution over the Australian Constitution is in the matter of exclusive powers of legislation vested in Parliament. While the exclusive authority of the Australian Parliament to legislate extends only to about 3 matters, the authority of the Indian Parliament as proposed in the Draft Constitution will extend to 91 matters. In this way the Draft Constitution has secured the greatest possible elasticity in its federalism which is supposed to be rigid by nature.

It is not enough to say that the Draft Constitution follows the Australian Constitution or follows it on a more extensive scale. What is to be noted is that it has added new ways of overcoming the rigidity and legalism inherent in federalism which are special to it and which are not to be found elsewhere.

First is the power given to Parliament to legislate on exclusively provincial subjects in normal times. I refer to Articles 226, 227 and 229. Under Article 226 Parliament can legislate when a subject becomes a matter of national concern as distinguished from purely Provincial concern, though the subject is in the State list, provided a resolution is passed by the Upper Chamber by -2/3rd majority in favour of such exercise of the power by the Centre. Article 227 gives the similar power to Parliament in a national emergency. Under Article 229

Parliament can exercise the same power if Provinces consent to such exercise. Though the last provision also exists in the Australian Constitution the first two are a special feature of the Draft Constitution.

The second means adopted to avoid rigidity and legalism is the provision for facility with which the Constitution could be amended. The provisions of the Constitution relating to the amendment of the Constitution divide the Articles of the Constitution into two groups. In the one group are placed Articles relating to (a) the distribution of legislative powers between the Centre and the States, (b) the representation of the States in Parliament, and (c) the powers of the Courts. All other Articles are placed in another group. Articles placed in the second group cover a very large part of the Constitution and can be amended by Parliament by a double majority, namely, a majority of not less than two-thirds of the members of each House present and voting and by a majority of the Total membership of each House. The amendment of these Articles does not require ratification by the States. It is only in those Articles, which are placed in group one that an additional safeguard of ratification by the States is introduced.

One can therefore safely say that the Indian Federation will not suffer from the faults of rigidity or legalism. Its distinguishing feature is that it is a flexible federation.

There is another special feature of the proposed Indian Federation, which distinguishes it from other federations. A Federation being a dual polity based on divided authority with separate legislative, executive and judicial powers for each of the two polities is bound to produce diversity in laws, in administration and in judicial protection. Upto a certain point this diversity does not matter. It may be welcomed as being an attempt to accommodate the powers of Government to Total needs and Total circumstances. But this very diversity when it goes beyond a certain point is capable of producing chaos and has produced chaos in many Federal States. One has only to imagine twenty different laws—if we have twenty States in the Union—of marriage, of divorce, of inheritance of property, family relations, contracts, torts, crimes, weights and measures, of bills and cheques, banking and commerce, of procedures for obtaining justice and in the standards and methods of administration. Such a state of affairs not only weakens the State but becomes intolerant to the citizen who moves from State to State only to find that what is lawful in one State is not lawful in another. The Draft Constitution has sought to forge means and methods whereby India will have Federation and at the same time will have uniformity in all the basic matters, which are essential to maintain the unity of the country. The means adopted by the Draft Constitution are three

- (1) a single judiciary,

- (2) uniformity in fundamental laws, civil and criminal, and
- (3) a common All-India Civil Service to man important posts.

A dual judiciary, a duality of legal codes and a duality of civil services, as I said, are the topical consequences of a dual polity, which is inherent in a federation. In the U.S.A. the Federal Judiciary and the State Judiciary are separate and independent of each other. The Indian Federation though a Dual Polity has no Dual Judiciary at all. The High Courts and the Supreme Court form one single integrated Judiciary having jurisdiction and providing remedies in all cases arising under the constitutional law. the civil law or the criminal law. This is done to eliminate all diversity in all remedial procedure. Canada is the only country, which furnishes a close parallel. The Australian system is only an approximation.

Care is taken to eliminate all diversity from laws which are at the basis of civic and corporate life. The great Codes of Civil & Criminal Laws such as the Civil Procedure Code. Penal Code, the Criminal Procedure Code, the Evidence Act. Transfer of Property Act. Laws of Marriage, Divorce, and Inheritance, are either placed in the Concurrent List so that the necessary uniformity can always be preserved without impairing the federal system.

The dual polity, which is inherent in a Federal system as I said, is followed in all Federations by a dual service. In all Federations there is a Federal Civil Service and a State Civil Service. The Indian Federation though a Dual Polity will have a Dual Service but with one exception. It is recognised that in every country there are certain posts in its administrative set up which might be called strategic from the point of view of maintaining the standard of administration. It may not be easy to spot such posts in large and complicated machinery of administration. But there can be no doubt that the standard of administration depends upon the calibre of the Civil Servants who are appointed to these strategic posts. Fortunately for us we have inherited from the past system of administration, which is common to the whole of the country, and we know what are these strategic posts. The Constitution provides that without depriving the States of their right to form their own Civil Services there shall be an All India Service recruited on an All-India basis with common qualifications, with uniform scale of pay and the members of which alone could be appointed to these strategic posts throughout the Union.

Such are the special features of the proposed Federation. I will now turn to what the critics have had to say about it.

It is said that there is nothing new in the Draft Constitution, that about half of it has been copied from the Government of India Act of 1935 and that the rest of it has been borrowed from the Constitutions of other countries. Very little of it can claim originality.

One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More than hundred years have rolled over when the first written Constitution was drafted. It has been followed by many countries reducing their Constitutions to writing. What the scope of a Constitution should be has long been settled. Similarly what are the fundamentals of a Constitution are recognised all over the world. Given these facts all Constitutions in their main provisions must take similar. The only new things, if there can be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country. The charge of producing a blind copy of the Constitutions of other countries is based, I am sure, on an inadequate study of the Constitution. I have shown what is new in the Draft Constitution and I am sure that those who have studied other Constitutions and who are prepared to consider the matter dispassionately will agree that the Drafting Committee in performing its duty has not been guilty of such blind and slavish imitation as it is represented to be.

As to the accusation that the Draft Constitution has produced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution. What I am sorry about is that the provisions taken from the Government of India Act, 1935, relate mostly to the details of administration. I agree that administrative details should have no place in the Constitution. I wish very much that the Drafting Committee could see its way to avoid their inclusion in the Constitution. But this is to be said on the necessity, which justifies their inclusion. Great, the historian of Greece, has said that:

" The diffusion of constitutional morality, not merely among the majority of any community but throughout the whole, is the indispensable condition of government at once free and peaceable ; since even any powerful and obstinate minority may render the working of a free institution impracticable, without being strong enough to conquer ascendancy for themselves.

By constitutional morality Grote meant " a paramount reverence for the forms of the Constitution, enforcing obedience to authority acting under and within these forms yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts combined too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of the Constitution will not be less sacred in the eyes of his opponents than in his own. " (*Hear, hear*).

While everybody recognises the necessity of the diffusion of the Constitutional morality for the peaceful working of a democratic Constitution,

there are two things interconnected with it which are not, unfortunately, generally recognised. One is that the form of administration has a close connection with the form of the Constitution. The form of the administration must be appropriate to and in the same sense as the form of the Constitution. The other is that it is perfectly possible to prevent the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to the spirit of the Constitution. It follows that it is only where people are saturated with Constitutional morality such as the one described by Grofe, the historian that one can take the risk of omitting from the Constitution details of administration and leaving it for the Legislature to prescribe them. The question is, can we presume such a diffusion of Constitutional morality ? Constitutional morality is not a natural sentiment, It has to be cultivated. We must realise that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic.

In these circumstances it is wiser not to trust the Legislature to prescribe forms of administration. This is the justification for incorporating them in the Constitution.

Another criticism against the Draft Constitution is that no part of it represents the ancient polity of India. It is said that the new Constitution should have been drafted on the ancient Hindu model of a State and that instead of incorporating Western theories the new Constitution should have been raised and built upon village Panchayats and District Panchayats. There are others who have taken a more extreme view. They do not want any Central or Provincial Governments. They just want India to contain so many village Governments. The love of the intellectual Indians for the village community is of course infinite if not pathetic (*laughter*). It is largely due to the fulsome praise bestowed upon it by Metcalfe who described them as little republics having nearly everything that they want within themselves, and almost independent of any foreign relations. The existence of these village communities each one forming a separate little State in itself has according to Metcalfe contributed more than any other cause to the preservation of the people of India, through all the revolutions and changes which they have suffered, and is in a high degree conducive to their happiness and to the enjoyment of a great portion of the freedom and independence. No doubt the village communities have lasted where nothing else lasts. But those who take pride in the village communities do not care to consider what little part they have played in the affairs and the destiny of the country ; and why ? Their part in the destiny of the country has been well described by Metcalfe himself who says:

"Dynasty after dynasty tumbles down. Revolution succeeds to revolution.

Hindu, Pathan, Mogul, Maharatha, Sikh, English, are all masters in turn but the village communities remain the same. In times of trouble they arm and fortify themselves. A hostile army passes through the country. The village communities collect their little, cattle within their walls and let the enemy pass unprovoked. "

Such is the part the village communities have played in the history of their country. Knowing this, what pride can one feel in them ? That they have survived through all vicissitudes may be a fact. But mere survival has no value. The question is on what plane they have survived. Surely on a low, on a selfish level. I hold that these village republics have been the ruination of India, I am therefore surprised that those who condemn Provincialism and communalism should come forward as champions of the village. What is the village but a sink of Totalism, a den of ignorance, narrow-mindedness and communalism ? I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit.

The Draft Constitution is also criticised because of the safeguards it provides for minorities. In this, the Drafting Committee has no responsibility. It follows the decisions of the Constituent Assembly. Speaking for myself. I have no doubt that the Constituent Assembly has done wisely in providing such safeguards for minorities as it has done. In this country both the minorities and the majorities have followed a Wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognise the existence of the minorities to start with. It must also be such that it will enable majorities and minorities to merge some day into one. The solution proposed by the Constituent Assembly is to be welcomed because it is a solution, which serves this two-fold purpose. To die-hards who have developed a kind of fanaticism against minority protection I would like to say two things. One is that minorities are an explosive force which, if it erupts, can blow up the whole fabric of the State. the history of Europe bears ample and appalling testimony to this fact. The other is that the minorities in India have agreed to place their existence in the hands of the majority. In the history of negotiations for preventing the partition of Ireland, Redmond said to Carson " ask for any safeguard you like for the Protestant minority but let us have a United Ireland." Carson's reply was " Damn your safeguards, we don't want to be ruled by you." No minority in India has taken this stand. They have Totally accepted the rule of the majority, which is basically a communal majority and not a political majority. It is for the majority to realise its duty not to discriminate against minorities. Whether the minorities will continue or will vanish must depend upon this habit of the majority. The moment the majority loses the habit of discriminating

against the minority, the minorities can have no ground to exist. They will vanish.

The most criticised part of the Draft Constitution is that which relates to Fundamental Rights. It is said that Article 13 which defines fundamental rights is riddled with so many exceptions that the exceptions have eaten up the rights altogether. It is condemned as a kind of deception. In the opinion of the critics Fundamental Rights are not Fundamental Rights unless they are also absolute rights. The critics rely on the Constitution of the United States and to the Bill of Rights embodied in the first ten Amendments to that Constitution in support of their contention. It is said that the Fundamental Rights in the American Bill of Rights are real because they are not subjected to limitations or exceptions.

I am sorry to say that the whole of the criticism about fundamental rights is based upon a misconception. In the first place, the criticism in so far as it seeks to distinguish fundamental rights from non-fundamental rights is not sound. It is incorrect to say that fundamental rights are absolute while non-fundamental rights are not absolute. The real distinction between the two is that non-fundamental rights are created by agreement between parties while fundamental rights are the gift of the law. Because fundamental rights are the gift of the State it does not follow that the State cannot qualify them.

In the second place, it is wrong to say that fundamental rights in America are absolute. The difference between the position under the American Constitution and the Draft Constitution is one of form and not of substance. That the fundamental rights in America are not absolute rights is beyond dispute. In support of every exception to the fundamental rights set out in the Draft Constitution one can refer to at least one judgement of the United States Supreme Court. It would be sufficient to quote one such judgement of the Supreme Court in justification of the limitation on the right of free speech contained in Article 13 of the Draft Constitution. In *Gittow Vs. New York* in which the issue was the constitutionality of a New York "criminal anarchy" law, which purported to punish utterances calculated to bring about violent change, the Supreme Court said:

" It is a fundamental principle, long established, that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom"

It is therefore wrong to say that the fundamental rights in America are absolute, while those in the Draft Constitution are not.

It is agreed that if any fundamental rights require qualification, it is for the

Constitution itself to qualify them as is done in the Constitution of the United States and where it does not do so, it should be left to be determined by the Judiciary upon a consideration of all the relevant considerations. All this, I am sorry to say, is a complete misrepresentation, if not a misunderstanding of the American Constitution. The American Constitution does nothing of the kind. Except in one matter, namely the right of assembly, the American Constitution does not itself impose any limitations upon the fundamental rights guaranteed to the American citizens. Nor is it correct to say that the American Constitution leaves it to the Judiciary to impose limitations on fundamental rights. The right to impose limitations belongs to the Congress. The real position is different from what is assumed by the critics. In America, the fundamental rights as enacted by the Constitution were no doubt absolute. Congress, however, soon found that it was absolutely essential to qualify these fundamental rights by limitations. When the question arose as to the constitutionality of these limitations before the Supreme Court, it was contended that the Constitution gave no power to the United States Congress to impose such limitation, the Supreme Court invented the doctrine of police power and refuted the advocates of absolute fundamental rights by the argument that every State has inherent in its police power which is not required to be conferred on it expressly by the Constitution. To use the language of the Supreme Court in the case I have already referred to, it said:

" That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime or disturb the public peace, is not open to question....."

What the Draft Constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of police power, it permits the State directly to impose limitations upon the fundamental rights. There is really no difference in the result. What one does directly the other does indirectly. In both cases, the fundamental rights are not absolute.

In the Draft Constitution the Fundamental Rights are followed by what are called " Directive Principles ". It is a novel feature in a Constitution framed for Parliamentary Democracy. The only other constitution framed for Parliamentary Democracy, which embodies such principles, is that of the Irish Free State. These Directive Principles have also come up for criticism. It is said that they are only pious declarations. They have no binding- force. This criticism is of course superfluous. The Constitution itself says so in so many words.

If it is said that the Directive Principles have no legal force behind them, I am prepared to admit it. But I am not prepared to admit that they have no sort of

binding force at all. Nor am I prepared to concede that they are useless because they have no binding force in law.

The Directive Principles are like the Instrument of Instructions, which were issued to the Governor-General, and to the Governors of the Colonies and to those of India by the British Government under the 1935 Act. Under the Draft Constitution it is proposed to issue such instruments to the President and to the Governors. The texts of these Instruments of Instructions will be found in Schedule IV of the Constitution. What are called Directive Principles is merely another name for Instrument of Instructions. The only difference is that they are instructions to the Legislature and the Executive. Such a thing is to my mind to be welcomed. Wherever there is a grant of power in general terms for peace, order and good government, it is necessary that it should be accompanied by instructions regulating its exercise.

The inclusion of such instructions in a Constitution such as is proposed in the Draft becomes justifiable for another reason. The Draft Constitution as framed only provides a machinery for the government of the country. It is not a contrivance to install any particular party in power as has been done in some countries. Who should be in power is left to be determined by the people as it must be, if the system is to satisfy the tests of democracy. But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these instruments of instructions, which are called Directive Principles. He cannot ignore them. He may not have to answer for their breach in a Court of Law. But he will certainly have to answer for them before the electorate at election time. What great value these directive principles possess will be realised better when the forces of right contrive to capture power.

This it has no binding force is no argument against their inclusion in the Constitution. There may be a difference of opinion as to the exact place they should be given in the Constitution. I agree that it is somewhat odd that provisions which do not carry positive obligations should be placed in the midst of provisions which do carry positive obligations. In my judgement their proper place is in Schedules III A & IV which contain Instrument of Instructions to the President and the Governors. For, as I have said, they are really Instruments of Instructions to the Executive and the Legislatures as to how they should exercise their powers. But that is only a matter of arrangement.

Some critics have said that the Centre is too strong. Others have said that it must be made stronger. The Draft Constitution has struck a balance. However much you may deny powers to the Centre, it is difficult to prevent the Centre from becoming strong. Conditions in modern world are such that centralisation of powers is inevitable. One has only to consider the growth of the Federal

Government in the U.S.A. which, notwithstanding the very limited powers given to it by the Constitution. has out-grown its former self and has overshadowed and eclipsed the State Governments. This is due to modern conditions. The same conditions are sure to operate on the Government of India and nothing that one can do will help to prevent it from being strong. On the other hand. we must resist the tendency to make it stronger. It cannot chew more than it can digest. Its strength must be commensurate with its weight. It would be a folly to make it so strong that it may all by its own weight.

The Draft Constitution is criticised for having one sort of constitutional relations between the Centre and the Provinces and another sort of constitutional relations between the Centre and the Indian States. The Indian States are not bound to accept the whole list of subjects included in the Union List but only those which come under Defence, Foreign Affairs and Communications. They are not bound to accept subjects included in the Concurrent List. They are not bound to accept the State List contained in the Draft Constitution. They are free to create their own Constituent Assemblies and to frame their own constitutions. All this, of course, is very unfortunate and. I submit quite indefensible.

This disparity may even prove dangerous to the efficiency of the State. So long as the disparity exists, the Centre's authority over all-India matters may lose its efficacy. For, power is no power if it cannot be exercised in all cases and in all places. In a situation such as may be created by war, such limitations on the exercise of vital powers in some areas may bring the whole life of the State in complete jeopardy. What is worse is that the Indian States under the Draft Constitution are permitted to maintain their own armies. I regard this as a most retrograde and harmful provision, which may lead to the break-up of the unity of India and the overthrow of the Central Government. The Drafting Committee, if I am not misrepresenting its mind, was not at all happy over this matter. They wished very much that there was uniformity between the Provinces; and the Indian States in their constitutional relationship with the Centre. Unfortunately, they could do nothing to improve matters. They were bound by the decisions of the Constituent Assembly, and the Constituent Assembly in its turn was bound by the agreement arrived at between the two negotiating Committees.

But we may take courage from what happened in Germany. The German Empire as founded by Bismarck in 1870 was a composite State, consisting of 25 units. of these 25 units, 22 were monarchical States and 3 were republican city States. This distinction, as we all know, disappeared in the course of time and Germany became one land with one people living under one Constitution. The process of the amalgamation of the Indian States is going to be much

quicker than it has been in Germany. On the 15th August 1947 we had 600 Indian States in existence. Today by the integration of the Indian States with Indian Provinces or merger among themselves or by the Centre having taken them as Centrally Administered Areas there have remained some 20/ 30 States as viable States. This is a very rapid process and progress. I appeal to those States that remain to fall in line with the Indian Provinces and to become full units of the Indian Union on the same terms as the Indian Provinces. They will thereby give the Indian Union the strength it needs. They will save themselves the bother of starting their own Constituent Assemblies and drafting their own separate Constitution and they will lose nothing that is of value to them.

I feel hopeful that my appeal will not go in vain and that before the Constitution is passed, we will be able to wipe off the differences between the Provinces and the Indian States.

Some critics have taken objection to the description of India in Article I of the Draft Constitution as a Union of States. It is said that the correct phraseology should be a Federation of States. It is true that South Africa, which is a unitary State, is described as a Union. But Canada, which is a Federation, is also called a Union. Thus the description of India as a Union, though its constitution is Federal, does no violence to usage. But what is important is that the use of the word Union is deliberate. I do not know why the word ' Union ' was used in the Canadian Constitution. But I can tell you why the Drafting Committee has used it. The Drafting Committee wanted to make it clear that though India was to be a Federation, the Federation was not the result of an agreement by the States to join in a Federation and that the Federation not being the result of an agreement no State has the right to secede from it. The Federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration the country is one integral whole, its people a single people living under a single *emporium* derived from a single source. The Americans had to wage a civil war to establish that the States have no right of secession and that their Federation was indestructible. The Drafting Committee thought that it was better to make it clear at the outset rather than to leave it to speculation or to dispute.

The provisions relating to amendment of the Constitution have come in for a virulent attack at the hands of the critics of the Draft Constitution. It is said that the provisions contained in the Draft make amendment difficult. It is proposed that the Constitution should be amendable by a simple majority at least for some years. The argument is subtle and ingenious. It is said that this Constituent Assembly is not elected on adult suffrage while the future Parliament will be elected on adult suffrage and yet the former has been given the right to pass the Constitution by a simple majority while the latter has been denied the same

right. It is paraded as one of the absurdities of the Draft Constitution. I must repudiate the charge because it is without foundation. To know how simple are the provisions of the Draft Constitution in respect of amending the Constitution one has only to study the provisions for amendment contained in the American and Australian Constitutions. Compared to them, those contained in the Draft Constitution will be found to be the simplest. The Draft Constitution has eliminated the elaborate and difficult procedures such as a decision by a convention or a referendum. The Powers of amendment are left with the Legislatures, Central and Provincial. It is only for amendments of specific matters—and they are only few—that the ratification of the State legislatures is required. All other Articles of the Constitution are left to be amended by Parliament. The only limitation is that it shall be done by a majority of not less than two-thirds of the members of each House present and voting and a majority of the Total membership of each House. It is difficult to conceive a simple method of amending the Constitution.

What is said to be the absurdity of the amending provisions is founded upon a misconception of the position of the Constituent Assembly and of the future Parliament elected under the Constitution. The Constituent Assembly in making a Constitution has no partisan motive. Beyond securing a good and workable constitution it has no axe to grind. In considering the Articles of the Constitution it has no eye on getting through a particular measure. The future Parliament, if it met as a Constituent Assembly, its members, will be acting as partisans seeking to carry amendments to the Constitution to facilitate to the passing of party measures which they have failed to get through Parliament by reason of some Article of the Constitution which has acted as an obstacle in their way. Parliament will have an axe to grind while the Constituent Assembly has none. That is the difference between the Constituent Assembly and the future Parliament. That explains why the Constituent Assembly though elected on limited franchise can be trusted to pass the Constitution by simple majority and why the Parliament though elected on adult suffrage cannot be trusted with the same power to amend it.

I believe I have dealt with all the adverse criticisms that have been levelled against the Draft Constitution as settled by the Drafting Committee. I don't think that I have left out any important comment or criticism that has been made during the last eight months during which the Constitution has been before the public. It is for the Constituent Assembly to decide whether they will accept the Constitution as settled by the Drafting Committee or whether they shall alter it before passing it.

But this I would like to say. The Constitution has been discussed in some of the Provincial Assemblies of India. It was discussed in Bombay, C.P.. West

Bengal, Bihar, Madras and East Punjab. It is true that in some Provincial Assemblies serious objections were taken to the financial provisions of the Constitution and in Madras to Article 226. But excepting this, in no Provincial Assembly was any serious objection taken to the Articles of the Constitution. No Constitution is perfect and the Drafting Committee itself is suggesting certain amendments to improve the Draft Constitution. But the debates in the Provincial Assemblies give me courage to say that the Constitution as settled by the Drafting Committee is good enough to make in this country a start with. I feel that it is workable, it is flexible and it is strong enough to hold the country together both in peacetime and in wartime. Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is. that Man was vile. Sir, I move.

{After the speech of Dr. Ambedkar, members of the Constituent Assembly rose (md spoke on the Draft Constitution. Here tire. some excerpts eulogising the work of Dr. Ambedkar and the Drafting Committee—Ed.]

Mr. Frank Anthony (C.P. and Berar : General) : Mr. President, Sir, although Dr. Ambedkar is not present in the House I feel that, as a lawyer at least. I ought to congratulate *him* for the symmetrical and lucid analysis, which he gave us of the principles underlying our Draft Constitution. Whatever different views we may hold about this Draft Constitution. I feel that this will be conceded that it is a monumental document at least from the physical point of view, if from no other point of view. And I think it would be churlish for us not to offer a word of special thanks, to the members of the Drafting Committee, because I am certain that they must have put in an infinite amount of labour and skill to be able to prepare such a vast document.....

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Lastly. I wish to endorse the sentiment expressed by Dr. Ambedkar when he commended the provisions on behalf of the minorities. I know that it is an unsavoury subject (after what India has gone through) to talk of minorities or in terms of minority problems. And I do not propose to do (hat I do not propose to commend these minority provisions, because they have already been accepted by the Advisory Committee ; they have been accepted by the Congress Party ; they have also been accepted by the Constituent Assembly. But I feel I ought to thank and to congratulate the Congress Party for its realistic and statesmanlike approach to this not easy problem ', and I feel we ought particularly to thank Sardar Patel for his very realistic and statesmanlike approach. There is no point in blinking or in shirking the fact that minorities do exist in this country, but if we approach this problem in the way the Congress has begun to approach it. I believe that in ten years there will be no minority problem in this country.

Believe me. Sir. when I tell you that 1. at any rate. do not think that there is a single right-minded minority that does not want to see this country reach, and reach in the shortest possible time, the goal of a real secular democratic State. We believe—we must believe—that in the achievement of that goal lies the greatest guarantee of any minority section in this country. As Dr. Ambedkar has said, we have struck a golden mean in this matter. The minorities too have been helpful.....

(Asterisk and dots indicate the portion omitted . Ed.)

Finally Sir, I wish to say that it is not so much on the written word of the printed Constitution that will ultimately depend whether we reach that full stature, but on the spirit in which the leaders and administrators of the country implement this Constitution of ours and on the spirit in which they approach the vast problems that face us ', on the way in which we discharge the spirit of this Constitution will depend the measure of our fulfilment of the ideals which we all believe in.

Shri Krishna Chandra Sharma (United Provinces : General) : I join in the pleasant task to compliment Dr. Ambedkar for the well worked out scheme he has placed before the House, the hard work he was put in, and his yesterday's able and lucid speech.

Sir, in considering a Constitution we have to take note of the fact that the Constitution is not an end in itself. A Constitution is framed for certain objectives and these objectives are the general good of the people, the stability of the State and the growth and development of the individual. In India when we say the growth and development of the individual we mean his self-realisation, self-development and self-fulfilment. When we say the development of the people we mean to say a strong and united nation.....

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Shri T. T. Krishnamachari (Madras : General) : Mr. President, Sir, I am one of those in the House who have listened to Dr. Ambedkar very carefully. I am aware of the amount of work and enthusiasm that he has brought to bear on the work of drafting this Constitution. At the same time I do realise that that amount of attention that was necessary for the purpose of drafting a Constitution so important to us at this moment has not been given to it by the Drafting Committee. The House is perhaps aware that of the seven members nominated by you, one had resigned from the House and was replaced. One died and was not replaced. One was away in America and his place was not filled up and another person was engaged in State affairs and there was a void to that extent. One or two people were far away from Delhi and perhaps reasons of health did not permit them to attend. So it happened ultimately that

the burden of drafting this Constitution fell on Dr. Ambedkar and I have no doubt that we are grateful to him for having achieved this task in a manner which is undoubtedly commendable. But my point really is that the attention that was due to a matter like this has not been given to it by the Committee as a whole.

Some time in April the Secretariat of the Constituent Assembly had intimated me and others besides myself that you had decided that the Union Powers Committee, the Union Constitution Committee and the Provincial Constitution Committee, at any rate the members thereof, and a few other selected people should meet and discuss the various amendments that had been suggested by the members of the House and also by the general public. A meeting was held for two days in April last and I believe a certain amount of good work was done and I see that Dr. Ambedkar has chosen to accept certain recommendations of the Committee, but nothing was heard about this committee thereafter. I understand that the Drafting Committee—at any rate Dr. Ambedkar and Mr. Madhava Rao—met thereafter and scrutinised the amendments and they have made certain suggestions, but technically perhaps this was not a Drafting Committee. Though I would not question your ruling on this matter, one would concede that the moment a Committee had reported that Committee became *functus officio*, and I do not remember your having reconstituted the Drafting Committee.....

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Shri Biswanath Das (Orissa : General) : Mr. Vice-President, Sir, I rise to thank the Honourable Dr. Ambedkar for the brilliant analysis of the Constitution that he presented to the Constituent Assembly. Sir, I equally thank his colleagues who laboured hard for six long months to forge the Constitution that is presented to this House.....

Shri B. Das (Orissa : General) : Mr. Vice President, Sir, at the outset I must pay my tribute to the Drafting Committee that did a greatly arduous work and put into shape and form the Constitution Bill which we are considering today and which we have to alter according to our will, so that a proper sovereign Constitution will be designed for India. While I pay my tribute to Dr. Ambedkar and his colleagues, I must also pay the tribute that your advisers deserve.....

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Shri Lokanath Misra (Orissa : General) : Sir, this Constituent Assembly which represents the sovereignty of India and which is supposed to give shape and form and prestige to our freedom is here deliberating on a Constitution that is supposed to be the guardian of our future. With that end in view. our leaders

have laboured enough and hard and have produced a Draft Constitution which we are now going to discuss.

Sir, my first point is this : that although Dr. Ambedkar has delivered a very brilliant, . illuminating. hold and lucid speech completely analyse the Draft Constitution.....

.... I would have taken some more lime to X-ray the speech of Dr. Ambedkar. I how down to his knowledge. I how down to his clarity of speech. I how down to his courage. But I am surprised to see that so learned a man, so great a son of India knows so little of India. He is doubtless the very soul of the Draft Constitution and he has given in his Draft something, which is absolutely un-Indian. By un-indian I mean that however much he may repudiate, it is absolutely a slavish imitation of—nay, much more.—a slavish surrender to the West.

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Kazi Syed Karimmuddin (C.P, and Berar : Muslim) : Mr. President. Sir, I congratulate Dr. Ambedkar for the introduction of the motion for the consideration of the Draft Constitution of India. The speed) that he delivered was a remarkable one and I am sure that his name is bound to go down to posterity as a great constitution-maker.....

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Prof. K. T. Shah (Bihar :General) : Sir. I have to join in the chorus of congratulations that have been offered to the Drafting Committee and its Chairman for the very elaborate Draft Constitution that they have placed before this House. I have particularly to felicitate the Law Minister for the very lucid way in which he has put forward the salient features of the Constitution for our consideration, and given us throughout-provoking ideas, with reasons why certain items have been included and why certain others have been put in the manner they have been..... ..

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Pandit Lakshmi Kanta Maitra (Wesl Bengal :General) : Sir. I would be failing in my duly if I do not at the very outset congratulate my Honourable friend and old colleague. Dr. Ambedkar. for the magnificent performance he made yesterday. The House appreciates the stupendous amount of time and energy he has spent in giving the constitutional proposals a definite shape.....

Shri Ramnarayan Singh (Bihar : General) : Sir, I congratulate my Honourable friend Dr. Ambedkar on the opportunity he got of introducing this Constitution Bill and I support his motion.....

Dr. P. S. Deshmukh (C.P. & Berar : General) : Sir, I am thankful to you for giving me this opportunity to express my views on the proposed Constitution. The time is limited and therefore my observations can only be of a very general nature. When consideration of the various clauses takes place I shall unfortunately not be present here. I am therefore all the more grateful to have these few minutes.

The speech delivered by my Honourable friend Dr. Ambedkar was an excellent performance and it was an impressive commentary on the Draft that has been presented. As is well known, he is an Advocate of repute and I think he ably argued what was before him. He would perhaps have shaped the Constitution differently if he had the scope to do so. In any case I think he admitted his difficulties fully when he said that after all you cannot alter the administration in a day. And if the present Constitution can be described in a nutshell it is one intended to fit in with the present administration.....

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Shri S. Nagappa : Mr. Vice-President, Sir, I join the previous speakers in congratulating the Honourable Chairman of the Drafting Committee and all members of it. They have taken care to see that all aspects of all problems and all the reports of the various committees have been consolidated and looked into.....

Sir, I am one of those who plead for a strong Centre, especially as we all know that we have won our freedom very recently. We require sufficient time to consolidate it and to retain it for all time to come. For another reason also the Centre has to be strong. We have been already divided in so many respects, communally and on religious grounds. Now let us not be divided on the basis of provinces. So, in order to unite all the provinces and to bring about more unity, it is in the country's interests as a whole to have a strong Centre.

Another reason why we should have a strong Centre I will mention presently. Some people say that we should have a strong Centre with a war mentality. I do not think we should have that mentality at all. We have been trained to be non-violent and truthful. These are our principles. When that is the case, there is no likelihood of the Centre having war mentality.

The Honourable Dr. Ambedkar, in introducing his report and the Draft Constitution, mentioned that the Constitution was federal in structure but unitary in character. I believe, Sir, especially at this stage we require such a Constitution. We were told that he has borrowed from the Government of India Act. When we find something good in it, we copy it. If we find something useful and suitable to us, to our custom and to our culture, in other constitutions, there is no harm in adopting it.

The minorities have been very well provided for in the Constitution. I am glad about it and the representatives who have been returned to this House to safeguard the interests of the minorities are also glad about it. For this we have to congratulate the majority community. We have to congratulate the majority community for conceding certain special privileges to the minorities.....

Sir, I once again thank the Honourable Dr. Ambedkar for having taken the trouble of drafting this Constitution. No doubt it is an elaborate task but he has done it so successfully and in such a short time.

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Shri Arun Chandra Guha (West Bengal : General) : Mr. Vice President, Sir..... Now to the Draft Constitution. I am afraid the Drafting Committee has gone beyond the terms. I am afraid the whole constitution that has been laid before us has gone beyond the main principles laid down by the Constituent Assembly. In the whole Draft Constitution we see no trace of Congress outlook, no trace of Gandhian social and political outlook. The learned Dr. Ambedkar in his long and learned speech has found no occasion to refer to Gandhiji or to the Congress, It is not surprising, because I feel the whole Constitution lacks in Congress ideal and Congress ideology particularly. When we are going to frame a constitution, it is not only a political structure that we are going to frame ; it is not only an administrative machinery that we are going to set up ; it is a machinery for the social and economic future of the nation.....

As for the Fundamental Rights, Dr. Ambedkar,— he is a learned professor and I acknowledge his learning and his ability and I think the Draft Constitution is mainly his handicraft—in his introductory speech, he has entered into a sort of metaphysical debate. He has introduced a new term ; I feel. Sir, there is no right in the world which is absolute. Every right carries with it some obligation; without obligation there cannot be any right.....

Mr. Vice President (Dr. H. C. Mookherjee) : Before I call upon the next member to address the House, I have here forty slips of members who wish to speak. The matter is so urgent and so important that I should like everybody to have an opportunity of airing his views on the Draft Constitution. May I therefore appeal to the speakers not to exceed the time-limit, which I have fixed as ten minutes ?

Shri T. Prakasam : (Madras : General) : Sir, the Draft Constitution introduced by Dr. Ambedkar, the Honourable member in charge, is a very big document. The trouble taken by him and those who are associated with him must have been really very great. My Honourable friend Mr. T. T. Krishnamachari, when he was speaking, explained the handicap under which the Honourable Dr. Ambedkar had been labouring on account of as many as

five or six members of the Committee having dropped out and their places not having been filled up.....

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Dr. Joseph Alban D'souza (Bombay : General) : Mr. Vice-President. never before in the annals of the history of this great nation, a history that goes hack to thousands of years has there ever been, and probably will there ever be, greater need—nay, Sir, I may even say as much need—as at this most vital and momentous juncture when this Honourable House will be considering clause by clause, article by article, the Draft Constitution for a Free. Sovereign, Democratic Indian Republic—as much need for a quiet and sincere introspection into our individual consciences for the purpose of giving unto Caesar what unto Caesar is due as much need for a keen spirit of fraternal accommodation and co-operation whereby peace, harmony and goodwill will be the hall-marks of our varied existences individually as well as collectively ; as much need for a sufficient breadth of vision so that the complex and the difficult problems that we have to face in connection with this constitutional set-up may be examined primarily from the broader angle of the prosperity and progress of the country as a whole ; and lastly, as *much* need for an adequately generous and altruistic display of that well-known maxim "Love thy neighbour as thyself", so that in the higher interests of the nation as a whole, sentimental, emotional, parochial particularisms may not be allowed unduly to influence the decisions of fundamental policy affecting the nation as a whole.

It has been admitted by several Members—particularly by every Member who has spoken before me—that the Draft Constitution is an excellent piece of work. May I say that it is a monumental piece of work put up by the Honourable Dr. Ambedkar and his Drafting Committee after months of laborious work which may definitely be qualified as the work of experts, work which is comparative, selective and efficient in character right from the beginning to the end.....

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The Honourable Shri K. Santhanam:..... .The Drafting Committee have done a good job of work. but at the same time I am afraid they cannot escape two valid criticisms. The Committee, I think illegitimately, converted themselves into a Constitution Committee. They have taken upon themselves the responsibility of changing some vital provisions adopted in the open House by this Assembly.....

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Shri R. K. Sidhwa (C.P. & Berar : General) : Mr. Vice-President, Sir, as an

able and competent lawyer, the Honourable Dr. Ambedkar has presented the Draft Constitution in this House in very lucid terms and he has impressed the outside world and also some of the Honourable Members here. but that is not the criterion for judging the constitution. This is a Constitution prepared for democracy in this country and Dr. Ambedkar has negated the very idea of democracy by ignoring the Total authorities and villages.....

Shri Jainarain Vyas (Jodhpur) : *Mr. Vice-President, Sir, Dr. Ambedkar and his colleagues as also the typist and copyists have to be thanked for the labour expended in preparing the Draft Constitution that is before us. This is a very big Draft and many things have been included in it.....

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Shri B. A. Mandloi (C. P. and Berar: General) : Mr. Vice-President, Sir, Dr. Ambedkar, Chairman of the Drafting Committee, in a very lucid speech explained the salient points of the Draft Constitution. In answer to the questions which are raised, namely, what is the form of the Government and what is the constitution of the country, he has pointed out that it is a federal type of Government with a strong Centre and a parliamentary system of Government with a single judiciary and uniformity in fundamental laws. He has also said that the emphasis has been placed on responsibility rather than on stability. It is strong enough in peace-time as well as in wartime. He has answered in his speech the various criticisms levelled against the Draft Constitution and I submit that his speech is a very lucid exposition of the Draft Constitution. The Draft Constitution prepared by the Drafting Committee is based on the reports of the various Committees, namely, the Union Power Committee, the Provincial Constitution Committee, the Advisory Committee and the Minority Committee. The Constituent Assembly in its very first session passed a Resolution with respect to the objective of our Constitution. That Resolution was moved by our respected leader, Pandit Jawaharlal Nehru, and was unanimously passed. We have to see that our Constitution is based on that fundamental Resolution—on that Objectives Resolution—in which the claims for justice, liberty, equality and fraternity had been granted. I submit that the Draft Constitution is a true reflection of the Objectives Resolution and therefore we can say that it has fulfilled our object.

There is another touchstone with which to see whether the Draft Constitution answers the purpose of our country and our nation. That touchstone is whether it would maintain our freedom, our independence and our democratic, secular Government. I am of opinion that, looking from that point of view also, this Draft Constitution serves our purpose.....

Sir. our Constitution is a Constitution, which has been evolved by us from

comparison of the various constitutions prevailing in the civilised countries all over the world. Various good points from all the constitutions have been taken with such modifications as are necessary in the interests of our country. If we faithfully and honestly work out the Constitution, I feel sure that our country would be prosperous, would be happy, would be strong, and we would be able to maintain our independence and not only maintain our independence but would be fulfilling the great mission of our departed leader, the Father of the Nation, who said that hereafter India would be in such a position as to free the other dependent countries and bring peace and prosperity in the whole world.

With these words, Sir, I submit that the Motion moved by Dr. Ambedkar be accepted by the House.

Pandit Balkrishna Sharma (United Provinces : General) : Mr. Vice-President, Sir, so many friends have come here and offered their congratulations to the Honourable the Law Minister who was in charge of this Draft Constitution that it will sound almost a tautology if I repeat the same sentiments again. But I think I will be failing in my duty if I do not offer my humble and respectful congratulations to the learned Law Minister for the very lucid manner in which he has presented this Draft Constitution for our consideration.

Many friends and critics have come here and levelled certain charges against our Constitution. The one charge, which has been repeated by many friends, is that ours is a very bulky Constitution. The Mover himself referred to the bulky nature of this document. When we really examine the clauses and articles of the various other Constitutions we come to the conclusion that ours is indeed a bulky Constitution. Sir, as you know, it contains 315 Articles, whereas the Constitution of British North America, that is Canada, contains only 147 Articles ; the Commonwealth of Australia Act contains about 128 Articles ; the Union of South Africa Act contains 153 Articles; the Irish Constitution contains only 63 Articles ; the U. S. Constitution contains 28 Articles ; the U.S.S.R. Constitution 146 Articles ; the Swiss Federal Constitution 123 Articles; the German Reich Constitution contains 181 Articles, and the Japanese Constitution 103 Articles. A glance at these Constitutions shows that none of them contains more than 200 Articles whereas our Constitution contains 315 Articles.

Critics have tried to make a great deal out of this bulkiness of our Constitution. But we must not forget that ours is a big country of 330 millions and we are making a Constitution for almost one fifth of humanity. Therefore there should be no wonder that our Constitution is bulky.....

Sir, our is a country which has got its own problems. In no country in the world are there what we call the principalities—the States—and there should be no wonder that in order to bring all these various factors in line with the present

day democratic principles, the draftsmen of our Constitution could not compress into a few Articles all that they wanted to do. Therefore the charge that has been levelled against our Constitution that it is bulky seems to me to be frivolous.....

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Pandit Thakur Dass Bhargava (East Punjab : General) : Since my friends insist that I should speak in English, I bow to their wishes. It is true that I am able to express myself with greater ease in Hindi but at the same time I do wish that I should be understood by all the members of the House.

Sir, I wish to join in the chorus of praise, which has been showered in this House on the Drafting Committee, but I cannot do so without reservation. When I bear in mind the complaints made by some friends here, I do feel that the Drafting Committee has not done what we expected it to do. Some of the members were absent, some did not join, and some did not fully apply their minds..... The real soul of India is not represented by this Constitution, and the autonomy of the villages is not fully delineated here and this camera (holding out the Draft Constitution) cannot give a true picture of what many people would like India to be. The Drafting Committee had not the mind of Gandhiji, had not the mind of those who think that India's teeming millions should be reflected through this camera. All the same. Sir, I cannot withhold my need of praise for the labour, the industry and the ability with which Dr. Ambedkar has dealt with this Constitution. I congratulate him on the speech that he made without necessarily concurring with him in all the sentiments that he expressed before this House.

I think, Sir, that the soul of this Constitution is contained in the Preamble and I am glad to express my sense of gratitude to Dr. Ambedkar for having added the word ' fraternity ' to the Preamble. Now, Sir, I want to apply the touch-stone of this Preamble to the entire Constitution. If Justice, Liberty, Equality and Fraternity are to be found in this Constitution, if we can get this ideal through this Constitution, I maintain that the Constitution is good.

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Prof. Shibban Lal Saksena (United Provinces : General) : Mr. Vice-President, we are today called upon to discuss the principles underlying our Draft Constitution. To begin with, I must congratulate the learned Doctor who has placed this motion before us. I have read the speech, which he delivered, several times and I think it is a masterpiece of lucid exposition of our Constitution. I certainly think that there could not have been an abler advocacy for the Draft Constitution.....

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..... Lastly. Sir, I thank the Drafting Committee for providing us with a very fine Constitution. I also feel that the suggestions that I have made will be discussed at the amendment stage and finally find a place in the Constitution of our country. Sir, with these words, I commend the motion to the House.

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Shri Sarangdhar Das (Orissa States) : Mr. Vice-President, Sir, like all the previous speakers I congratulate the Drafting Committee, and especially its Chairman. Dr. Ambedkar for the hard work that they have put in. But at the same time, there are certain timings in his speech with which I cannot agree.....

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Shri R. R. Diwakar (Bombay : General) : Mr. Vice-President, Sir. Honourable Members who have spoken before me have covered enough ground and I think I should not take much time of the House in going over the same ground. I would like to make a few points, which from my point of view are very important when we are on the eve of giving a new Constitution to our country. One thing which I wish to make quite clear is that the Draft Constitution which is before us is really a monumental work and we all of us have already given congratulations to the Drafting Committee and its Chairman who is presenting it through this House. At the same time I would like to point out that the Drafting Committee has not only drafted the decisions of the Constituent Assembly but in my humble opinion it has gone far beyond mere drafting, I may say that it has reviewed the decisions, it has revised some of the decisions and possibly recast a number of them. It might be that it was inevitable to do so under the circumstances, but at the same time we, the Members of the Constituent Assembly, should be aware of this fact when we are considering the Draft and when we are thinking in terms of giving our amendments.....

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Mahboob Ali Baig Sahib Bahadur (Madras : Muslim) : Mr. Vice-President, Sir, Dr. Ambedkar's analysis and review were remarkably lucid, masterly and exceedingly instructive and explanatory. One may not agree with his views but it is impossible to withhold praise for his unique performance in delivering the speech he did while introducing his motion for the consideration of this House.....

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Mr. Z. H. Lari :In order to assess the value of the provisions, we have to hear in mind two things : firstly, certain admissions made by the Honourable Mover of the Resolution, I mean the Honourable Dr. Ambedkar, and secondly our experience of the working of democracy in the last fifteen months after the attainment of independence. When the House adopted resolutions, which are the basis of the Draft Constitution, we had no such experience before us ; but now we have. The First admission that the Honourable Mover made was, and I will use his own words: " Democracy in India is only a top-dressing on Indian soil, which is essentially undemocratic "..... "It is wiser not trust the legislatures to prescribe forms of administration. " With respect. I say lie is mainly right.

Mr. Hussain Imam :I must say that I find the position of the President of the Drafting Committee unenviable. He has been attacked from the left for not having copied the Soviet Constitution, and from the right for not having gone back to the village panchayat as his unit. May I say that there is an element of confusion in some of our friends minds, when they want that the Constitution should provide for all the ills to which Indians are subject. It is not part of the Constitution that it should provide for cloth and food. A very revered Member of this Constituent Assembly regretted that this Constitution does not contain any provision for that purpose. My submission Sir, is that the Constitution is based on the needs of a country to which it is applied. We have to see whether this Constitution does supply those essentials, which are peculiar to our own, circumstances.....

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Begum Aizaz Rasul (United Provinces: Muslim): Sir, I congratulate the Honourable Dr. Ambedkar for his lucid and illuminating exposition of the draft Constitution. He and the Drafting Committee had no ordinary task to perform and they deserve our thanks.

Sir, I feel it a great privilege to be associated with the framing of the Constitution. I am aware of the solemnity of the occasion. After two centuries of slavery India has emerged from the darkness of bondage into the light of freedom, and today, on this historic occasion we are gathered here to draw up a Constitution for Free India which will give shape to our future destiny and carve out the social, political and economic status of the three hundred million people living in this vast sub-continent. We should therefore be fully aware of our responsibilities and set to this task with the point of view of how best to evolve a system best suited to the needs, requirements, culture and genius of the people living here.....

..... A lot of criticism has been made about Dr. Ambedkar's remark regarding village polity. Sir, I entirely agree with him. Modern tendency is towards the right of the citizen as against any corporate body and village panchayats can be very autocratic.....

Sir, as a woman, I have very great satisfaction in the fact that no discrimination will be made on account of sex. It is in the fitness of things that such a provision should have been made in the Draft Constitution, and I am sure women can look forward to equality of opportunity under the new Court.

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Dr. Manmohan Das (West Bengal : General) : Mr. Vice-President, Sir, a few days have passed since the Draft Constitution, was introduced on the floor of this house by our able Law Minister and Chairman of the Drafting Committee, Dr. Ambedkar. During these few days, the Draft Constitution has met with scorching criticism at the hands of different members of this House. With the exception of a very few members who questioned the very competency and authenticity of this House to pass the Draft Constitution, all the other members have been unanimous in their verdict. They have accepted the Draft Constitution with some alterations, additions and omissions, in some clauses and articles, as a fairly workable one to begin with. One very re-assuring feature that we find in the Constitution is the single citizenship. As the Chairman of the Drafting Committee has said, unlike the American Constitution, the Draft Constitution has given us a single citizenship, the citizenship of India. In these days of provincialism, when every province likes to thrive at the cost of its neighbouring ones, when we have forfeited the sympathy and goodwill of our neighbouring provinces, it is indeed a great re-assuring feature. I, as a member from West Bengal, especially find myself elated to think that henceforth when this Constitution is passed, when this clause of single citizenship, with its equal rights and privileges all over India, is passed, the door of our neighbouring provinces will be open to us, so that our unfortunate brethren from the Eastern Pakistan, will find a breathing-space in our neighbouring provinces.....

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Shri V. I. Muniswamy Pillai (Madras : General) : Mr. Vice-President, Sir, nobody in this august Assembly or outside can belittle the efforts and the services rendered by the Drafting Committee that has presented the Draft Constitution for the approval of this House. The future generation will feel great pride that this Drafting Committee has been able to digest the various constitutions that are obtaining in the world today and to cull from them such of the provisions as are needed for the elevation of this great sub-continent.....

With these few observations, I congratulate the President and members of the

Drafting Committee for their great service in presenting the Draft Constitution to this Assembly and I commend the motion to this House for its acceptance.

Shrimati Dakshayani Velayudhan (Madras : General) : Mr. Vice-President, Sir, now that the draft is before us for general discussion, I request you to permit me to express my views on the same. The able and eloquent Chairman of the Drafting Committee has done his duty creditably within the scope of the general set-up of the new State of India. I feel that even if he wanted he could not have gone beyond the broad principles under which transfer of power took place and I therefore think that any criticism that is levelled against him is Totally uncharitable and undeserved. Even if there is any blame—and I think there is—it should go only to those of us who are present here and who were sent for the purpose of framing a Constitution and on whom responsibilities were conferred by the dumb millions of this land who by virtue of their suffering for independence had great hopes when they sent us to this Assembly. But this does not mean that I have not got any criticism about the Draft.....

Shri Deshbandhu Gupta (Delhi) : Mr. President, I am sorry I cannot congratulate Dr. Ambedkar, the Chairman of the Drafting Committee who has received congratulations from different members of the House.....

.....This is what I wanted to say. As far as Delhi and other places are concerned. I would like to urge that we should take into consideration the fact that Delhi is the Capital and that as such it must be given a distinct status. I am one with Lala Deshbandhu Gupta on this question. But the small regions like Ajmer-Merwara, Coorg, Pantipiptoda etc. should be merged in the provinces. It is no use making them centrally administered areas. This much I would like to submit to Doctor Sahib. He is a great scholar, and as such he should treat this country also as a land of wisdom. It is my appeal to him that he should give a place to the soul of India in this constitution.....

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Giani Gurmukh Singh Musafir (East Punjab : Sikh) : Mr. President, like my Honourable friend Shri Deshbandhu Gupta. I cannot say that Dr. Ambedkar, Chairman of the Drafting-Committee does not deserve any congratulation. On several matters he deserves congratulation for several reasons and the Committee's labour in framing this first Constitution is certainly praiseworthy. In spite of that, if anybody discovers any error, he mentions it, according to the measure of his understanding.....

The Honourable Rev. J. J. M. Nicholls-Roy (Assam : General) : Mr. Vice-President. Sir. it is indeed a great privilege to associate myself in rendering tribute to Dr. Ambedkar and the other members of the Drafting Committee for the stupendous task they have undertaken to bring out this Draft Constitution. They all deserve our best thanks.....

I must especially thank the Drafting Committee for accepting the draft for the creation of District Councils with autonomy in the hill districts in Assam which in the Sixth Schedule are called autonomous districts.

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Mr. Mohammed Ismail Sahib (Madras : Muslim) : Mr. Vice-President.Sir. it is indeed a great speech in which the Honourable Dr. Ambedkar has commended the consideration of the Draft Constitution to the House. For lucidity, for persuasiveness, impressiveness and logic. I do not think that it could be beaten. All congratulations to him. but this does not mean that one is agreeing with everything that is said by him in the speech.....

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Shri Alladi Krishnaswami Ayyar (Madras : General) : Sir, Before making a few remarks on the Draft Constitution. I should like to join in the tribute of praise to the Honourable Dr. Ambedkar for the lucid and able manner in which he has explained the principles of the Draft Constitution though I owe it to myself to say that I do not share the views of my Honourable Friend in his general condemnation of village communities in India. I must also express my emphatic dissent from his observation that Democracy in India is only a top-dressing on Indian soil.....

Before I proceed to make my remarks on the Draft Constitution. in view of certain observations of my honourable Friend Mr. T. T. Krishnamachari on the work of the Drafting Committee and the part taken by its members, I owe it to myself and to the House to explain my position. As a member of the Committee, in spite of my indifferent health, I took a fairly active part in several of its meetings prior to the publication of the Draft Constitution and sent up notes and suggestions for the consideration of my colleagues even when I was unable to attend its meetings. Subsequent to the publication of the draft. for reasons of health, I could not take part in any of its deliberations. and I can claim no credit for the suggestions as to the modifications of the draft.....

.....A brief survey of the draft Constitution must convince the Members that it is based upon sound principles of democratic government and contains within itself elements necessary for growth and expansion and is in line with the most advanced democratic Constitution of the world. It is well to remember that a Constitution is after all what we make of it. The best illustration of this is found in the Constitution of the United States which was received with the least enthusiasm when it was finally adopted by the different States but has stood the test of time and is regarded as a model Constitution by the rest of the democratic world.

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Pandit Govind Malaviya : Sir, before I say anything else, I should like to offer my cordial congratulations to ourselves and to the Drafting Committee and its versatile Chairman, our friend. Dr. Ambedkar, for the very excellent work which, they have done in giving us this Draft Constitution. It was a difficult problem, which they had to face and they have tackled it most excellently. There may be many things in the Draft Constitution, which one might have wished to be slightly different, but then that must be so about anything which can be produced anywhere.....

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Shri R. Sankar (Travancore) : Sir, I must at the very outset congratulate the framers of the Draft Constitution on the very efficient manner in which they have executed their duty ; and I must particularly congratulate Dr. Ambedkar on the very lucid and able exposition of the principles of the Draft Constitution that he gave us by his brilliant speech. I do not propose to go into the details of the Draft Constitution but will content myself with dealing with one or two aspects of it. I think the most salient features of the Draft Constitution are a very strong Centre and rather weak but homogeneous Units. Dr. Ambedkar made a fervent appeal to the representatives of the States to take up such an attitude as to make it possible for all the States and the provinces to follow the same line, and in course of time to establish homogeneous units of the Federation without any distinction between the States and the provinces.....

Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, objections of fundamental importance have been raised to the Draft Constitution as it has emerged from the Drafting Committee. I agree that there is nothing characteristic in this Constitution reflecting our ancient culture or our traditions. It is true that it is a patch work of some of the old constitutions of the west,—not even some of the modern constitutions of the west,—with a replica of the Government of India Act, 1935. It is true that they have been brought together and put into a whole. Dr. Ambedkar is not responsible for this ; we atone have been responsible for this character of the Constitution. We have not thought that we must imprint upon this a new characteristic, which will bring back to our memories our ancient culture. It is more our fault than the fault of Dr. Ambedkar.....

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Shri Rohini Kumar Chaudhari (Assam : General) : Sir, I am deeply grateful to you for having given me this opportunity of participating in this debate of momentous importance but before I proceed. I should like to pay my share of tribute to the members of the Drafting Committee, its worthy President and above all, our Constitutional Adviser whose services to our poor Province,

Assam, in the heyday of his youth are still remembered with affection and gratitude.....

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Shri L. Krishnaswami Bharathi (Madras : General) : Mr. Vice-President.
..Dr. Ambedkar deserves the congratulations of this House for the learned and brilliant exposition of the Draft Constitution. No congratulations are due to him for the provisions in the Draft for the simple reason they are not his. Honourable members may remember that most of the clauses in the Draft Constitution were discussed, debated and decided upon in this House. Only a very few matters were left over for incorporation by the Drafting Committee. The House, however, would lender its thanks for his labours in putting them in order.....

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Shri Vishwambhar Dayal Tripathi (United Provinces : General) : Sir,
.To come directly to the subject-matter, it has been a formality with almost all the speakers to congratulate the Members of the Drafting Committee and its Chairman on the labour they have put in and also on the merits of the Constitution. I would not undergo that formality. There is no doubt, of course, that they have put in a good deal of labour and have placed before us a complete picture of a Constitution on the principles that we laid down in this Constitution Assembly. I am also aware that there is a good deal of merit in the draft Constitution. They have no doubt thoroughly studied the constitutions of different countries and have tried to make a choice out of them and to adapt those constitutions to the needs of this country. This is the chief merit of this Draft Constitution. In one word, it is an 'orthodox' Constitution.....

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Shri S. V. Krishnamurthy Rao (Mysore) : Mr. Vice-President, I thank you for giving me an opportunity to speak on the Draft Constitution. I join the various speakers who have paid a chorus of tribute to the Drafting Committee and its Chairman. Dr. Ambedkar. An attempt has been made in this Draft Constitution to put in the best experience of the various democratic constitutions in the world, both unitary and federal. of course no Constitution can be perfect and even our Constitution will have to undergo some modifications before it finally emerges from (his House.....

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Shri N. Madhava Rau(Orissa States). : Mr. Vice-President, I had not intended to join in this discussion, but in the course of the debate, several remarks were made not only on the provisions of the Draft Constitution, but on the manner in which the Drafting Committee had done their work. There was criticism made on alleged faults of commission and omission of the Committee. Mr. Alladi Krishnaswami Iyer who spoke yesterday and Mr. Saadulla who will

Speak on behalf of the Committee a little later have cleared or will clear the misapprehensions on which this criticism is based. I felt that as a member of the Committee who participated in many of its meetings after I had joined the Committee I should also contribute my share in removing these misapprehensions if they exist among any large section of the House.

It is true that the Draft Constitution does not provide for all matters. or in just the way, that we would individually have liked. Honourable Members have pointed out, for instance, that cow-slaughter is not prohibited according to the Constitution, Fundamental Rights are too profusely qualified, no reference is made to the Father of the Nation, the National Flag or the National Anthem. And two of our Honourable friends have rightly observed that there is no mention even of God in the Draft Constitution. We have all our favourite ideas : but however sound or precious they may be intrinsically in other contexts, they cannot be imported into the Constitution unless they are germane to its purpose and are accepted by the Constituent Assembly.

Several speakers have criticised the Draft on the ground that it bears no impress of Gandhian philosophy and that while borrowing some of its provisions from alien sources, including the Government of India Act, 1935, it has not woven into its fabric any of the elements of ancient Indian policy.

Would our friends with Gandhian ideas tell us whether they are prepared to follow those ideas to their topical conclusions by dispensing, for instance, with armed forces ; by doing away with legislative bodies. whose work, we have been told on good authority, Gandhiji considered a waste of lime ; by scrapping our judicial system and substituting for it some simple and informal methods of administering justice; by insisting that no Government servant or public worker should receive a salary exceeding Rs. 500 per month or whatever was the limit finally fixed ? I know some of the Congress leaders who sincerely believe that all this should and could be done. But we are speaking now of the Constitution as it was settled by the Constituent Assembly on the last occasion.....

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Syed Muhammad Saadulla (Assam : Muslim) : Mr. Vice President. Sir,The Drafting Committee is not self-existent. It was created by a Resolution of this House in August 1947. if I remember right. I personally was lying seriously ill at the time and I could not attend that session. But, Sir, I find from the proceedings that as the Drafting Committee has been asked to frame the Constitution within the four corners of the Objective Resolution, we will be met with the criticisms, which we have heard now. Wise men even in those days had anticipated this and to the official Resolution an amendment was moved by the learned Premier of Bombay, Mr. Kher, wherein we are given this direction. I will read from his speech. He moved an amendment to the original Resolution

for Constituting this Drafting Committee and there he said—" That the Drafting Committee should be charged with the duties of scrutinising the draft of the text of the Constitution of India prepared by the Constitutional Adviser giving effect to the decisions taken already in the Assembly and including all matters which are ancillary thereto or which have to be provided in such a Constitution and to submit to the Assembly for consideration the text of the draft Constitution as revised by the Committee".....

.....That was the amendment, which was accepted by the House. Sir, after this amendment of the Honourable Mr. Kher which was accepted by the House, it does not lie in the mouth of the Members of the Constituent Assembly to say that we have gone far beyond our jurisdiction.....

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Mr. Vice-President : Let us proceed with the subject.

Syed Muhammad Saadulla :How can I tell Honourable Members that we toiled and moiled that we did our best, that we ransacked all the known Constitutions, ancient and recent from three different continents, to produce a Draft which has been termed to be noticing but patch-work ? But those who are men of art, those who love crafts, know perfectly well that even by patch-work, beautiful patterns, very loveable designs can be created. I may claim that in spite of the deficiencies in our Draft we have tried to bring a complete picture, to give this Honourable House a document as full as possible which may form the basis of discussion in this House. The Drafting Committee never claimed this to be the last word on the Constitution, that its provisions are infallible or that these Articles cannot be changed. The very fact that this Draft has been placed before this august House for final acceptance shows that we are not committed to one policy or the other. Where we had differed from the recommendations of Committees, or where who had the temerity to change a word here or a word there from the accepted principles of this august House, we have given sufficient indication in foot-notes, so that nothing can be put in surreptitiously there. The attention of the House has been drawn so that their ideas may be focussed on those items in which the Drafting Committee thought that they should deviate from the principles already accepted or from the recommendations of the Committees.

{After Mr. Sandulla 's speech, the motion was put to vote as under.—Ed.]

Mr. Vice-President : The question is :

" That the Constituent Assembly *do* proceed to take into consideration the Draft (constitution of India settled by the Drafting Committee appointed in pursuance of the resolution of the Assembly dated the 29th day of August, 1947. "

The motion was adopted.

{The Draft Constitution is appended herewith. Clause by clause discussion of the Draft Constitution followed. Dr. Ambedkar's pointing of the Constitution may be seen in the next two parts of this Volume.—Ed.]

Continued...